

R17. Administrative Services, Archives and Records Service.**R17-7. Archival Records Care and Access at the State Archives.****R17-7-1. Authority and Purpose.**

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the care and access of records in the custody of the State Archives, including classification or reclassification.

R17-7-2. Custody of Records, Care and Access.

(1) The State Archives accepts records which are placed in the official custody of the State Archivist in accordance with Sections 63G-2-604, 63A-12-102, 63A-12-103, and 63A-12-105.

(2) Records in the State Archives are available for public use in the State Archives insofar as use of the records is not restricted by law.

(3) Except as otherwise provided by law, records may not be removed or loaned for research use outside the State Archives.

R17-7-3. Access to Records.

(1) Records are made available for public use in the State Archives Research Center. Patrons must observe Research Center procedures for the protection and control of the records.

(2) Patrons are required to register to use the Research Center and Research Center staff may require patrons to provide photographic identification.

(3) Patrons shall only use a pencil when making personal notes, shall not mark public records, and shall maintain the original order of the public records consulted.

(4) Persons may not smoke, drink, or eat in the Research Center.

(5) Patrons may take only paper and research materials into the Research Center. Patrons must check brief cases, purses, backpacks, or similar items at the desk before entering the research area.

(6) Patrons shall use care in handling fragile materials. Patrons shall not alter, mutilate, or otherwise deface public records and are required to adhere to the instructions of reference staff.

(7) Patrons may not remove government records from the Research Center.

(8) Patrons may only use equipment and resources in the Research Center for the purposes of research associated with the Utah State Archives or Utah State History.

R17-7-4. Enforcement.

(1) If a patron violates R17-7-3, Research Center staff may issue a verbal warning.

(2) If, after an unheeded warning, or if there is risk of immediate or severe damage to records, staff may request the patron to leave immediately.

(3) If a patron fails to promptly comply with staff request to leave, staff may request assistance from building security personnel and from city police.

(4) These enforcement subsections do not limit the State Archives from performing its duties and enforcing these rules as otherwise allowed by law.

KEY: records retention, public information, access to information

August 15, 2013

63A-12-104

Notice of Continuation May 28, 2013

R35. Administrative Services, Records Committee.**R35-1. State Records Committee Appeal Hearing Procedures.****R35-1-1. Scheduling Committee Meetings.**

(1) The Executive Secretary shall respond in writing to the notice of appeal within five business days.

(2) Two weeks prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting on the Public Meeting Notice Web site.

(3) One week prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting indicating the agenda, date, time and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements will be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed thirty minutes to present testimony and evidence and to call witnesses.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations shall be permitted. At the conclusion of the testimony presented, the Committee Chair shall ask for statements from any third party. Third party presentations shall be limited to ten minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more members of the Committee or a party may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Chair.

(13)(a) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the governmental entity in writing no later than two days prior to the scheduled hearing date. Failure to comply with this provision may result in a Committee order requiring that the petitioner pay the governmental entity's reasonable costs and expenses. The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request; (ii) the timeliness of the request; (iii) whether petitioner has previously requested and received a postponement; (iv) any other factor determined to protect the equitable interests of the parties.

(c) The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within seven business days after the hearing. Copies of the Decision and Order will be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) Purpose. Utah Code Section 52-4-203 requires any public body to establish and implement procedures for the public body's approval of the written minutes of each meeting. This rule establishes procedures for the State Records Committee to approve the written minutes of each meeting.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-203, 63G-3-201, and 63A-12-101 et seq.

(3) All meetings of the Committee shall be recorded. The recording of the open meeting shall be made available to the public within 3 business days. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

(4) Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by the Executive Secretary.

(a) Written minutes shall be read by members prior to the next scheduled meeting, including electronic meetings.

(b) Written minutes from meetings will be made available no later than one week prior to the date of the next regularly scheduled Committee meeting.

(c) When minutes are complete but waiting official approval, they are a public record and must be marked as "Draft".

(d) At the next meeting, at the direction of the chair, minutes shall be amended and/or approved with individual votes recorded in the minutes. The minutes will be then marked as "Approved".

(e) When the minutes are "Approved" they will be so noted in the printed and online versions. A copy of the approved minutes shall be made available for public access at the Utah State Archives.

**KEY: government documents, state records committee,
records appeal hearings
August 30, 2013 63G-2-502(2)(a)
Notice of Continuation September 23, 2009**

R58. Agriculture and Food, Animal Industry.**R58-1. Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals.****R58-1-1. Authority.**

(1) Promulgated under the authority of Title 4, Chapter 31 and Subsections 4-2-2(1)(c)(i), 4-2-2(1)(j).

(2) It is the intent of these rules to eliminate or reduce the spread of diseases among animals by providing standards to be met in the movement of animals within the State of Utah (INTRASTATE) and the importation of animals into the state (INTERSTATE).

R58-1-2. Definitions.

(1) "Accredited Veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services (VS), Animal and Plant Health Inspection Services (APHIS), United States Department of Agriculture (USDA), in accordance with the provisions of 9 CFR 161 to perform functions required by cooperative State-Federal disease control and eradication programs.

(2) "Animal identification number (AIN)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code).

(3) "Animals" means all vertebrates, except humans.

(4) "Approved livestock facility" means a stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary inspection where livestock are assembled and that has been approved by the Department.

(5) "Approved Livestock Market" means a livestock market that is licensed by the Department under Title 4, Chapter 30, Livestock Markets.

(6) "Approved Slaughter Establishment" means a State or Federally inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by State or Federal inspectors.

(7) "Approved tagging site" means a premises, authorized by Department, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

(8) "Brand Inspection Certificate" means an official form, issued by a government agency or other agency responsible for animal identification in the state of origin, used to transfer title of livestock; listing the identification marks of the animals(s) as well as the consignor and consignee contact information.

(9) "Camelidae" means a term referring to members of the family of animals which for the purposes of these rules includes camels (*Camelus dromedarius* and *Camelus bactrianus*), llamas (*Lama glama*), alpacas (*Vicugna pacos*), guanacos (*Lama guanicoe*), and vicunas (*Vicugna vicugna*).

(10) "Captive Cervidae" means a term referring to members of the family of animals which for the purposes of these rules includes captive bred Caribou (Reindeer (*Rangifer tarandus*)), captive bred Elk (*Cervus canadensis nelsoni*), and captive bred Fallow deer (*Dama dama*) or any other captive bred cervidae allowed with permission from the State Veterinarian and the Utah Division of Wildlife Resources.

(11) "Certificate of Veterinary Inspection" means an official paper or electronic form completed by an accredited veterinarian that has examined the animal or animals listed on the certificate and has completed all disease testing or vaccinations as required.

(12) "Commuter herd" means a herd of cattle located in two or more states that is documented as a valid ranching

operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual.

(13) "Commuter herd agreement" means a written agreement between the owner(s) of a herd of cattle and the animal health officials for the States or Tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying the time period, up to 1 year, that the agreement is effective. A commuter herd agreement may be renewed annually.

(14) "Dairy cattle" means all cattle, regardless of age or sex or current use, that are of a breed(s) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

(15) "Department" means the Utah Department of Agriculture and Food.

(16) "Designated brucellosis surveillance area" means an area within a state that has been designated by the animal health official of that state as an area of increased disease risk for bovine brucellosis.

(17) "Direct Movement" means the movement in which the animals are not unloaded enroute to their final destination, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and not commingled with another producer's animals.

(18) "Exotic animal" means a rare or unusual animal pet or an animal, not commonly thought of as a pet, kept within a human household. For this chapter, rodents, reptiles, and amphibians are considered exotic animals.

(19) "Exposed Animal" means an animal that has been in contact with or on the same premises of or within a quarantine zone where animals with a contagious or communicable disease are present.

(20) "Farm of Origin" means the farm where the animal was born and remain prior to importation into the state.

(21) "Flock-based number system" means the flock-based number system that combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.

(22) "Flock identification number (FIN)" means a nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.

(23) "Group/lot identification number (GIN)" means the identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the preharvest production chain.

(24) "Import Permit" means a number given by the Department to the issuing veterinarian that is recorded on the certificate of veterinary inspection and is required before movement of the animals into the state.

(25) "Interstate movement" means movement of animals from one State into or through any other State.

(26) "Livestock Market Veterinarian" means a Utah licensed and USDA accredited veterinarian appointed by the Utah Department of Agriculture and Food to work at approved livestock markets.

(27) "Location identification (LID) number" means a nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock

production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

(28) "National Uniform Eartagging System (NUES)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

(29) "Official Calhhood Vaccinate" means female bison or cattle vaccinated by a USDA Veterinary Services representative, State certified technician, or accredited veterinarian with an approved dose of RB51 vaccine or other USDA approved agent while from 4 to 12 months of age in accordance with its labeling. These cattle must be properly identified by official tattoos and ear tag or registration tattoo and be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.

(30) "Official eartag" means an identification tag approved by the Department that bears an official identification number for individual animals. The official eartag must be tamper-resistant and have a high retention rate in the animal.

(31) "Official eartag shield" means the shield shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or Tribal alpha code imprinted within the shield.

(32) "Official identification device or method" means a means approved by the Department of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species or otherwise officially identifying an animal or group of animals.

(33) "Official identification number" means a nationally unique number that is permanently associated with an animal or group of animals.

(34) "Officially identified" means identified by means of an official identification device or method approved by the Department.

(35) "Poultry" means domestic fowl (chickens, turkeys, ducks, geese, and guinea and pea fowl), pigeons and doves, pheasants and other gamebirds, and ratites.

(36) "Premises identification number (PIN)" means a nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises.

(37) "Qualified Feedlot" means a feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows or bulls which are either official calhhood vaccinated, or brucellosis unvaccinated animals confined to a drylot area which is used to upgrade or finish feeding animals going only to slaughter or another qualified feedlot. All such animals must be kept separate from other animals not destined for slaughter.

(38) "Quarantine" means a verbal or written restriction of movement of animals into or out of an area or premise, issued by a State Animal Health Official.

(39) "Reactor" means any animal that has been determined by a designated brucellosis epidemiologist to be infected with brucellosis based on test results, herd/flock history, and/or culture results.

(40) "Suspect" means any animal that may be infected with a contagious, infectious, or communicable disease based on test results and/or herd/flock history.

(41) "Test Eligible Cattle and Bison" means all cattle or bison six months of age or older, except:

1. Steers, spayed heifers;

2. Official calhhood vaccinates of any breed under 24 months of age which are not parturient, springers, or post parturient.

(42) "United States Department of Agriculture (USDA) approved backtag" means a backtag issued by APHIS that

provides a temporary unique identification for each animal.

(43) "Zoological animal" means an animal kept at a zoological garden (zoo) or other exhibition that is inspected on a regular basis by the United States Department of Agriculture.

R58-1-3. Official Identification Devices and Methods.

(1) Any State, Tribe, accredited veterinarian, or other person or entity who distributes official identification devices must maintain for 5 years a record of the names and addresses of anyone to whom the devices were distributed.

(2) An official identification number is a nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

(a) National Uniform Eartagging System (NUES).

(b) Animal identification number (AIN).

(c) Location-based number system.

(d) Flock-based number system.

(e) Any other numbering system approved by the animal health official of the state of origin for the official identification of animals.

(3) The Department has approved the following official identification devices or methods for the species listed.

(a) The Department may authorize the use of additional devices or methods for a specific species if the Department determines that such additional devices or methods will provide for adequate traceability.

(4) Cattle and bison that are required to be officially identified for interstate movement must be identified by means of:

(a) An official eartag; or

(b) Brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities; or

(c) Tattoos and other identification methods acceptable to a breed association for registration purposes, accompanied by a breed registration certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities; or

(d) Group/lot identification when a group/lot identification number (GIN) may be used.

(5) Horses and other equine species that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) A description sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes or biometric measurements); or

(b) Electronic identification that complies with ISO 11784/11785; or

(c) Non-ISO electronic identification injected to the equine on or before June 30, 2013; or

(d) Digital photographs sufficient to identify the individual equine.

(6) Poultry that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Sealed and numbered leg bands; or

(b) Group/lot identification when a group/lot identification number (GIN) may be used.

(7) Sheep and goats that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Electronic implants when accompanied by a certificate or owner statement that includes the electronic implant numbers and the name of the chip manufacturer; or

(b) Official eartags, including tags approved for use in the Scrapie Flock Certification Program or APHIS-approved

premises identification number eartags when combined with a unique animal identification number; or

(c) United States Department of Agriculture backtags or official premises identification backtags that include a unique animal identification number, when used on sheep or goats moving directly to slaughter and when applied within 3 inches of the poll on the dorsal surface of the head or neck; or

(d) Legible official registry tattoos that have been recorded in the book of record of a sheep or goat registry association when the animal is accompanied by either a registration certificate or a certificate of veterinary inspection.

(i) These tattoos may also be used as premises identification if they contain a unique premises prefix that has been linked in the National Scrapie Database with the assigned premises identification number of the flock of origin; or

(e) Premises identification eartags or tattoos, if the premises identification method includes a unique animal number or is combined with a flock eartag that has a unique animal number and the animal is accompanied by an owner statement; or

(f) Premises identification when premises identification is allowed and the animal is accompanied by an owner statement; or

(g) Any other official identification method or device approved by the animal health official of the state of origin.

(8) Swine that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Official eartags; or

(b) United States Department of Agriculture backtags, when used on swine moving to slaughter; or

(c) Official swine tattoos, when used on swine moving to slaughter; or

(d) Ear notching when used on any swine, if the ear notching has been recorded in the book of record of a purebred registry association; or

(e) Tattoos on the ear or inner flank of any swine, if the tattoos have been recorded in the book of record of a swine registry association;

(f) For slaughter swine and feeder swine, an eartag or tattoo bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated; or

(g) Any other official identification device or method that is approved by the animal health official of the state of origin; or

(h) Group/lot identification when a group/lot identification number (GIN) may be used.

(9) Captive cervids that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Official eartag; and

(b) A tattoo that is placed peri-anally or inside the right ear and consist of a number assigned by the animal health official of the state of origin; or

(c) A microchip that has been placed in the right ear.

R58-1-4. Intrastate Cattle Movement - Rules - Brucellosis.

(1) The State Veterinarian may require brucellosis testing of cattle, bison, and elk, moving intrastate as necessary to protect against potential disease threat or outbreak.

(2) Utah Department of Agriculture and Food Livestock Inspectors will help regulate intrastate movement of cattle according to Brucellosis rules at the time of change of ownership inspection.

R58-1-5. Interstate Importation Standards.

(1) No animal, poultry or bird of any species or other animal including wildlife, that is known to be affected with or has been exposed to a contagious, infectious or communicable

disease, or that originates from a quarantined area, shall be shipped, transported or moved into the State of Utah until written permission for such entry is first obtained from the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services Division, and the Utah Department of Agriculture and Food, State Veterinarian or Commissioner of Agriculture.

(a) Failure to obtain written permission may result in a citation.

(2) An official Certificate of Veterinary Inspection issued by an accredited veterinarian is required for importation of all animals.

(3) A copy of the certificate shall be immediately forwarded to the Utah Department of Agriculture and Food by the issuing veterinarian or the animal health official of the state of origin within 7 calendar days from date on which the Certificate of Veterinary Inspection or other document is received or issued.

(4) Import permits for livestock, poultry and other animals may be obtained by telephone or via the internet to the accredited veterinarian responsible for issuing a Certificate of Veterinary Inspection.

(5) Certificates of Veterinary Inspection are considered valid for 30 days from the date of inspection.

R58-1-6. Cattle and Bison.

(1) A Certificate of Veterinary Inspection and an import permit must accompany all cattle and bison imported into the state.

(2) All cattle and bison must carry some form of individual identification as listed in R58-1-3(4).

(a) Individual identification must be listed on the Certificate of Veterinary Inspection.

(i) Official individual identification used for testing purposes must be shown on the Certificate of Veterinary Inspection; or

(ii) A copy of the official brucellosis or tuberculosis test sheets must be stapled to each copy of the Certificate of Veterinary Inspection.

(b) All cattle and bison imported into Utah from Canada, except those imported directly to slaughter, must be permanently branded with the letters CAN, not less than two (2) inches high nor more than three (3) inches high, placed high on the right hip.

(3) The import permit number must be listed on the Certificate of Veterinary Inspection.

(4) The following cattle are exempted from (1) above:

(a) Cattle consigned directly to slaughter at an approved slaughter establishment; or

(b) Cattle consigned directly to a State or Federal approved Auction Market.

(c) Movements under Subsections R58-1-5(4)(a), and R58-1-5(4)(b) must be in compliance with state and federal laws and regulations and must be accompanied by a weighbill, brand certificate, or similar document showing some form of positive identification, signed by the owner or shipper stating the origin, destination, number and description of animals and purpose of movement.

(d) Commuter cattle are exempt as outlined in Subsection R58-1-5(6).

(5) A brand inspection certificate or proof of ownership, which indicates the intended destination, is required for cattle entering the state.

(6) Commuter cattle may enter Utah or return to Utah after grazing if the following conditions are met.

(a) A commuter permit approved by the import state and the State of Utah must be obtained prior to movement into Utah. This will allow movements for grazing for the current season if the following conditions are met:

(i) All cattle shall meet testing requirements as to State classification for interstate movements as outlined in 9 CFR 1-78, which is incorporated by reference; USDA, Animal and Plant Health Inspection Services, Brucellosis Eradication, Uniform Methods and Rules, October 1, 2003, and approved by cooperating States.

(ii) Commuter cattle shall not be mixed with quarantined, exposed, or suspect cattle nor change ownership during the grazing period.

(iii) All bulls used in the commuter herd must be tested annually for trichomoniasis as required by the State of Utah.

(b) No quarantined, exposed or reactor cattle shall enter Utah.

(7) Prior to importation of cattle or bison into Utah the following health restrictions must be met.

(a) Bison and cattle heifers of vaccination age between four and 12 months must be officially calfhood vaccinated for brucellosis prior to entering Utah, unless:

(i) going directly to slaughter, or

(ii) qualified feedlot to be sold for slaughter, or

(iii) to an approved livestock market to be sold for slaughter or for vaccination.

(iv) Bison and cattle heifers of vaccination age may be vaccinated upon arrival by special permit from the State Veterinarian.

(b) All female bison and cattle over 12 months of age imported to Utah must have evidence of a brucellosis calfhood vaccination tattoo to be imported or sold into the State of Utah, unless:

(i) going directly to slaughter, or

(ii) qualified feedlot to be sold for slaughter, or

(iii) to an approved livestock market to be sold for slaughter, or

(iv) tested negative for *Brucella abortus* within 30 days prior to entry.

(c) Test eligible cattle imported from states designated as brucellosis free, but are coming from a designated brucellosis surveillance area within that state, must be tested negative for brucellosis within 30 days prior to entry.

(i) Test eligible cattle may enter the state prior to testing with approval from the State Veterinarian but must be tested immediately upon arrival and the cattle must be kept isolated away from other cattle until tested negative.

(d) All test eligible cattle imported from states that have not been designated as brucellosis free must test negative for brucellosis within 30 days before movement into Utah.

(e) Exceptions to the above testing requirements include exhibition animals and test eligible cattle imported to Utah and moving directly to:

(i) an approved livestock market, or

(ii) to a "qualified feedlot", or

(iii) for immediate slaughter to an approved slaughter establishment.

(f) No reactor cattle, or cattle from herds under quarantine for brucellosis will be allowed to enter the state except when consigned to an approved slaughter establishment. An import permit and a Veterinary Services Form 1-27 prior to shipment are also required.

(g) Entry of cattle which have been retattooed is not permitted unless they are moved for immediate slaughter to an approved slaughter establishment or to not more than one state or federal approved market for sale to a qualified feedlot or slaughtering establishment.

(h) A negative tuberculosis test is required within 60 days prior to shipment for all dairy cattle 2 months of age and older and bison 6 months of age and older.

(i) Breeding cattle originating within a quarantined area or from reactor or exposed herds and all cattle from an area which is not classified as Tuberculosis Free are required to be tested

for tuberculosis within 60 days prior to entry to Utah.

(j) Rodeo bulls and roping steers must be tested annually during the calendar year for tuberculosis prior to entry to Utah.

(k) No cattle infested with, or exposed to scabies shall be moved into Utah. Cattle from a county where scabies has been diagnosed during the past 12 months must be officially treated within 10 days prior to shipment into Utah. The date of treating and products used must be shown on the Certificate of Veterinary Inspection.

(l) No cattle infested with ticks that can transmit splenic or tick fever, or exposed to tick infestations shall be imported into the State of Utah for any purpose.

(m) All bulls imported to Utah shall be in compliance with R58-21-3(A), which requires testing of all bulls over twelve months of age for trichomoniasis prior to entry, with some exceptions which are for slaughter, rodeo, exhibition, and bulls kept in confinement.

R58-1-7. Horses, Mules, Asses, and Other Equidae.

(1) Equidae may be imported into the State of Utah when accompanied by an official Certificate of Veterinary Inspection.

(2) The Certificate of Veterinary Inspection must show a negative Equine Infectious Anemia (EIA)(Coggins - AGID or ELISA) test within one year previous to the time the certificate was issued.

(a) Entry of equidae into Utah shall not be allowed until the EIA test has been completed and reported negative.

(b) Equidae which test positive to the EIA test shall not be permitted entry into Utah, except by special written permission from the State Veterinarian.

(c) A nursing foal less than six (6) months of age accompanied by its EIA negative dam is exempt from the test requirements.

(3) Utah horses returning to Utah as part of a commuter livestock shipment are exempted from the Certificate of Veterinary Inspection requirements; however, a valid Utah horse travel permit as outlined under Sections 4-24-22 or 4-24-23 and Section R58-9-4 is required for re-entering Utah.

(4) An import permit issued by the Department must accompany all stallions or semen.

(5) All stallions used for breeding that enter Utah or stallions whose semen will be shipped to Utah shall be tested for Equine Viral Arteritis (EVA) by an accredited veterinarian within 30 days prior to entry.

(a) Exceptions are stallions that have proof of negative EVA status prior to vaccination and proof of subsequent yearly vaccination.

(b) The EVA test or vaccination status must be recorded on the Certificate of Veterinary Inspection.

(c) Breeding stallions and semen infected with Equine Arteritis Virus must be handled only on an approved facility as required by R58-23.

R58-1-8. Swine.

(1) Swine may be shipped into the state if the following requirements are met:

(a) All swine must be accompanied by an approved Certificate of Veterinary Inspection stating they have not been fed raw garbage.

(i) The Certificate of Veterinary Inspection must show individual identification, ear tags, tattoos, registration numbers, microchips or other permanent means.

(b) An import permit issued by the Department must accompany all swine imported into the state.

(c) All breeding and exhibition swine over the age of three months shipped into Utah shall be tested negative for brucellosis within 30 days prior to movement into the state or originate from a validated brucellosis free herd or brucellosis free state.

(i) A validated brucellosis free herd number and date of last test is required to be listed on the Certificate of Veterinary Inspection.

(ii) Swine from states with serious disease occurrences or known populations of feral or wild hogs may be required to be tested for Brucellosis prior to entry to Utah.

(d) All breeding, feeding and exhibition swine shall be tested negative for pseudorabies within thirty days unless they originate from a recognized qualified pseudorabies free herd or pseudorabies Stage V state.

(i) Swine that have been vaccinated with any pseudorabies vaccine shall not enter the state.

(ii) Swine which are infected or exposed to pseudorabies may not enter the state, except swine consigned to a slaughterhouse for immediate slaughter and must be moved in compliance with 9 CFR 71, which is incorporated by reference.

(iii) Swine from states with known populations of feral or wild hogs may be required to be tested for Pseudorabies prior to entry to Utah.

(2) Prohibition of Non-domestic and Non-native Suidae and Tayassuidae

(a) Javelina or Peccary, and feral or wild hogs such as Eurasian or Russian wild hogs (*Sus scrofa*) are considered invasive species in Utah, capable of establishing wild reservoirs of disease such as brucellosis and pseudorabies.

(b) These animals are prohibited from entry to Utah except when approved by special application only for purposes of exhibition and after meeting the above testing requirements.

(c) Any person who imports Javelina, Peccary or feral or wild hogs such as Eurasian or Russian wild hogs (*Sus scrofa*) into Utah without prior approval by the Department shall be subject to citation and fines as prescribed by the Department or may be called to appear before an administrative proceeding by the department.

R58-1-9. Sheep.

(1) All sheep imported must be accompanied by a Certificate of Veterinary Inspection and an import permit.

(a) No sheep exhibiting clinical signs of blue tongue may enter Utah.

(b) Sheep must be thoroughly examined for evidence of foot rot and verified that they are free from foot rot.

(c) Sheep entering Utah must comply with federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(d) Sheep from scrapie infected, exposed, quarantined or source flocks may not be permitted to enter the state unless an official post-exposure flock eradication and control plan has been implemented.

(e) Breeding rams six months of age or older shall test negative for *Brucella ovis* within 30 days of entry or originate from a certified brucellosis free flock.

(i) Rams entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.

R58-1-10. Poultry.

(1) All poultry and hatching eggs being imported into Utah must meet the following requirements:

(a) All poultry and hatching eggs must have an import permit from the Department.

(b) All poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan VS Form 9-3.

(c) All poultry and hatching eggs shall originate from flocks or hatcheries that have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state, or

(d) All poultry entering Utah from a flock or hatchery

which does not have a clean rating through NPIP certification must have been tested negative for Pullorum-Typhoid within the last 30 days.

R58-1-11. Goats and Camelids.

(1) Goats being imported into Utah must meet the following requirements:

(a) Dairy goats must have an import permit from the Department and an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and accredited tuberculosis free herd. There to; there must be no evidence of caseous lymphadenitis (abscesses).

(b) Meat type goats must have an import permit from the Department and an official Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous lymphadenitis (abscesses).

(c) Goats entering Utah must comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(d) Goats for slaughter may be shipped into Utah directly to an approved slaughter establishment or to an approved auction market without an official Certificate of Veterinary Inspection and an import permit but must comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(2) Camelids being imported into Utah must have an import permit from the Department and an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and accredited tuberculosis free herd.

(3) Test eligible age for both brucellosis and tuberculosis shall be 6 months of age or older for both goats and camelids.

(4) Dairy goats and camelids entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.

R58-1-12. Psittacine and Passerine Birds and Raptors.

(1) No psittacine or passerine birds or raptors shall be shipped into the State of Utah unless an official Certificate of Veterinary Inspection accompanies the birds.

(2) The number and kinds of birds to be shipped into Utah, their origin, date to be shipped and destination must be listed on the Certificate of Veterinary Inspection.

R58-1-13. Dogs, Cats, and Ferrets.

(1) All dogs, cats and ferrets shall be accompanied by an official Certificate of Veterinary Inspection.

(2) All dogs, cats and ferrets over three months of age must be currently vaccinated against rabies before entering Utah.

(a) The date of vaccination, name of product used, and expiration date must be written on the Certificate of Veterinary Inspection.

(3) No puppies or kittens less than 8 weeks of age shall be imported into the state unless accompanied by the mother.

R58-1-14. Exotic Animals.

(1) It is unlawful for any person to import into the State of Utah any species of exotic animal that is prohibited for importation or possession as listed in Utah Administrative Code R657-3.

(2) All exotic animals (birds, mammals, and reptiles) must be accompanied by an official Certificate of Veterinary Inspection.

(3) All aquatic animals (fish, mollusk, crustacean, or

amphibians) must fulfill all requirements of Utah Administrative Code R58-17 prior to importation into the State of Utah.

R58-1-15. Game and Fur-Bearing Animals.

(1) No game or fur bearing animals will be imported into Utah without an import permit being obtained from the Department.

(2) Each shipment shall be accompanied by an official Certificate of Veterinary Inspection.

(3) All mink entering Utah shall have originated on ranches where mink viral enteritis has not been diagnosed or exposed to within the past three years.

R58-1-16. Captive Cervidae.

(1) All captive cervidae entering Utah must meet the following requirements:

(a) No captive elk will be imported into Utah unless the destination premises is licensed with the Utah Department of Agriculture and Food.

(b) No captive caribou or fallow deer will be imported into Utah unless a Certificate of Registration (COR) has been obtained from the Utah Division of Wildlife Resources.

(c) No captive cervidae will be allowed to be imported into Utah that have originated from or have ever been east of the 100 degree meridian.

(d) All captive elk imported into Utah must meet the genetic purity requirement as referenced in Title 4, Chapter 39, Section 301, Utah Code Unannotated.

(e) All captive elk must meet the following Chronic Wasting Disease (CWD) requirements:

(i) Elk must come from a state with a USDA approved herd certification program.

(ii) Elk must originate from a herd that is not affected with or is a trace back or forward herd for CWD.

(iii) Elk must originate from a herd that has had a CWD herd surveillance program for 5 years prior to movement.

(f) All captive cervidae must be permanently identified using either a microchip or tattoo.

(g) All captive cervidae must have an import permit from the Department.

(h) All captive cervidae must have an official Certificate of Veterinary Inspection showing the following:

(i) A negative tuberculosis test within 60 days of import.

(ii) Negative Brucella abortus test results from a single sample that has been tested by two USDA approved tests.

(iii) Two forms of individual animal identification.

(iv) A statement that the animals listed on the certificate are not known to be infected with Johne's Disease (Paratuberculosis) or Malignant Catarrhal Fever and have never been east of the 100 degree meridian.

R58-1-17. Zoological Animals.

(1) The entry of zoological animals to be kept in zoological gardens, or shown at exhibitions is authorized when an import permit, subject to requirements established by the State Veterinarian, has been obtained from the Department and the animals are accompanied by an official Certificate of Veterinary Inspection.

(2) Movement of these animals must also be in compliance with the Federal Animal Welfare Act, 7 USC 2131-2159.

R58-1-18. Wildlife.

(1) It is unlawful for any person to import into the State of Utah any species of live native or exotic wildlife except as provided in Title 23, Chapter 13 and Utah Administrative Code R657-3.

(2) All wildlife imports shall meet the same Department

requirements as required for the importation of domestic animals.

R58-1-19. Duties of Carriers.

Owners and operators of railroads, trucks, airplanes, and other conveyances are forbidden to move any livestock, poultry, or other animals into or within the State of Utah or through the State except in compliance with the provisions set forth in these rules.

(1) Sanitation. All railway cars, trucks, airplanes, and other conveyances used in the transportation of livestock, poultry or other animals shall be maintained in a clean, sanitary condition.

(2) Movement of Infected Animals. Owners and operators of railway cars, trucks, airplanes, and other conveyances that have been used for movement of any livestock, poultry, or other animals infected with or exposed to any infectious, contagious, or communicable disease as determined by the Department, shall be required to have cars, trucks, airplanes, and other conveyances thoroughly cleaned and disinfected under official supervision before further use is permissible for the transportation of livestock, poultry or other animals.

(3) Compliance with Laws and Rules. Owners and operators of railroad, trucks, airplanes, or other conveyances used for the transportation of livestock, poultry, or other animals are responsible to see that each consignment is prepared for shipment in keeping with the State and Federal laws and regulations. Certificate of Veterinary Inspection, brand certificates, and permits should be attached to the waybill accompanying the attendant in charge of the animals.

KEY: disease control, import requirements

August 21, 2013

Notice of Continuation January 18, 2012

4-31

4-2-2(1)(j)

R64. Agriculture and Food, Conservation Commission.**R64-2. Conservation Commission Electronic Meetings.****R64-2-1. Authority and Purpose.**

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, and 4-18-105.

(3) Procedure. The following provisions govern any meeting at which a voting majority of commissioners appear at the anchor location, by telephone, or electronically pursuant to Utah Code Section 52-4-207:

(a) If enough commission members which constitute a voting majority intend to participate electronically or by telephone, public notices of the meeting shall be posted. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or by telephone will be meeting 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. Written or electronic notice shall also be posted on the Public Notice Website. These notices shall be provided at least 24 hours before the meetings.

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

(d) When notice is given of the possibility of a member appearing electronically or by telephone, any commission member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commission member initially appears electronically or by telephone, the chair shall identify for the record all those who are appearing by telephone or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Agriculture and Food, 350 N Redwood Road, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: electronic meetings**August 21, 2013****52-4-207****Notice of Continuation June 4, 2013**

R131. Capitol Preservation Board (State), Administration.**R131-2. Capitol Hill Complex Facility Use.****R131-2-1. Purpose and Application.**

(1) The purpose of this rule is to define conditions for public access and use of the Capitol Hill Complex and to establish procedures for receiving and deciding complaints regarding the access or use of the Capitol Hill Complex.

(2) Except as expressly stated herein, or in rule R131-11, this rule R131-2 does not apply to free speech activities. Free speech activities conducted at the Capitol Hill Complex are governed by rule R131-11.

R131-2-2. Authority.

(1) The State Capitol Preservation Board adopts this Capitol Hill Complex Facility Use Rule pursuant to Section 63C-9-301.

R131-2-3. Definitions.

As used in this rule R131-2:

(1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.

(2) "Capitol Hill Complex" means all grounds, monuments, parking areas, buildings, including the Capitol, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard. Capitol Hill Complex also includes:

(a) the White Community Memorial Chapel and the Council Hall Travel Information Center building and their grounds and parking areas;

(b) the Daughters of the Utah Pioneers museum and buildings, grounds and parking areas, and other state-owned property included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;

(c) state owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and

(d) state owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street, and any other facilities and grounds owned by the state of Utah that are located within the immediate vicinity.

(3) "Capitol Hill Facilities" means all buildings on the Capitol Hill Complex, including the Capitol, exterior steps, entrances, streets, parking areas and other paved areas of the Capitol Hill Complex.

(4) "Capitol Hill Grounds" means landscaped and unpaved public areas of the Capitol Hill Complex. Maintenance and utility structures and areas are not considered Capitol Hill Grounds for the purpose of any public use.

(5) "Catering Service(s)" means the serving of food and/or beverages on Capitol Hill.

(6) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event. Commercial activities do not include private, community service, state sponsored, or free speech activities.

(7) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group. To the extent the event is sponsored by a private charitable organization, the organization must have an Internal Revenue Code Section 501(c)(3) active status and the event must be related to such status.

(8) "Event" or "Events" are commercial, community service, private, and state sponsored activities involving one or more persons. Events may include banquets, receptions, award ceremonies, weddings, colloquia, concerts, dances, and

seminars. A free speech activity is not an event for purposes of rule R131-2 and R131-10. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(9) "Executive Director" means the executive director appointed by the Board under Section 63C-9-102, or a designee supervised by the executive director.

(10) "Facility Use Application" ("Application") means a form approved by the executive director used to apply to reserve Capitol Hill Facilities or Capitol Hill Grounds for an event.

(11) "Facility Use Permit" ("Permit") means a written permit issued by the executive director authorizing the use of an area of the Capitol Hill Complex for an event in accordance with this rule.

(12) "Free Speech Activity" is as defined in rule R131-11.

(13) "Cafe Operator" means the Capitol Hill cafe operator located on the first floor of the East Senate Building who is under contract with the Board to provide food/beverages in the State Room and may be allowed to cater in other areas on the Capitol Hill Complex.

(14) "Private Activity" means an event sponsored by private individuals, businesses or organizations that is not a commercial or community service activity.

(15) "Authorized Caterer" means a person or entity authorized to provide catering services on the Capitol Hill Complex, and is not the Cafe Operator.

(16) "Solicitation" is as defined in rule R131-10.

(17) "State" means the state of Utah and any of its agencies, departments, divisions, officers, legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

(18) "State Sponsored Activity" means any event sponsored by the state that is related to official state business. Official state business does not include award ceremonies, lobbying activities, retirement parties, or similar social parties, social activities or social events. Management retreats may be considered a State Sponsored Activity if it has a supporting agenda and documentation establishing that the primary purpose of the retreat is to conduct official state business. In order to be considered a State Sponsored Activity, such activity must obtain written approval from the Executive Director and/or the Board's Budget Development and Board Operations Subcommittee.

(19) "User(s)" means any person that uses the facilities or grounds as well as any applicant for a facility use permit.

R131-2-4. Facility Use Permit - Application.

(1) Each person or group seeking to hold an event or solicitation at the Capitol Hill Complex shall submit a completed Facility Use Application at least fourteen calendar days prior to the anticipated date of the event. Applications may not be submitted, and facilities will not be scheduled, more than 365 calendar days before the date of the event. An applicant may only make one application for one continuous event at a time. For State Sponsored Activities that involve a reoccurring meeting schedule, one application may be used for all the reoccurring meetings. For all events, other than State Sponsored Activities or Free Speech Activities, there shall be a non-waivable and non-refundable application processing fee, which shall be paid at the time of submission of the application.

(2) The executive director shall provide a Facility Use Permit Application form. The form shall request and applicants shall provide all necessary information, including all material aspects of the proposed event or solicitation. This necessary information is required even if the Applicant requests a waiver. The application shall include the following information:

(a) the applicant's organization's name, address, telephone and facsimile number;

(b) the names and addresses of the person(s) responsible

for supervising the event during set up, take down, clean up and the duration of the event;

(c) the nature of the applicant; i.e. individual, business entity, governmental department or other;

(d) the name and address of the legally recognized agent for service of process;

(e) a specific description of the area of the facility and/or grounds being requested for use;

(f) the type of proposed activity and the number of anticipated participants;

(g) the dates and times of the proposed activity and a description of the schedule and agenda of the event;

(h) a complete description of equipment and apparatus to be used for the event;

(i) any other special considerations or accommodations being requested; and

(j) whether the applicant requests exemption or waiver of any requirement of this rule or provision of the Facility Use Application.

(3) In addition, the applicant shall submit with the Facility Use Application:

(a) documentation supporting any requested exemption or waiver;

(b) proof of liability insurance covering the applicant and the event in the amount as identified in the Schedule of Costs and Fees as referred to in rule R131-2-7(1)(a);

(c) a deposit and down payment in the amounts as identified in the Schedule of Costs and Fees as described in rule R131-2-7(1)(a) for the type of event proposed; and

(d) other information as requested by the executive director.

(4) Applications shall be reviewed by the executive director for completeness, activity classification, costs and fees.

(5) Priority for use of the Capitol Hill Complex will be given to applications for state sponsored activities. During the actual hours of legislative sessions, priority will be given to free speech activities over commercial, community service and private activities. Otherwise, applications will be approved, and requested facilities reserved, on a first-come, first-serve basis.

R131-2-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.

(1) Within ten working days of receipt of a completed application, the executive director shall issue a Facility Use Permit or notice of denial of the application.

(2) The executive director may deny an application if:

(a) the application does not comply with the applicable rules;

(b) the event would conflict or interfere with a state sponsored activity, a time or place reserved for free speech activities, the operation of state business, or a legislative session; and/or

(c) the event poses a safety or security risk to persons or property.

(3) The executive director may place conditions on the approval that alleviates such concerns.

(4)(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may appeal the executive director's determination by delivering the written appeal and reasons for the disagreement to the executive director within five working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten working days after the executive director receives the written appeal, the executive director may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the executive director's reconsideration determination, the applicant may appeal the matter, in writing, within ten working days to the Board's Budget Development and Board Operations

Subcommittee chair who will determine the process of the appeal.

(d) The applicant may appeal the Subcommittee Chair's determination in writing within ten working days of receipt of the written determination, by submitting a written appeal at the Board's office. The Board shall consider the appeal at its next regularly scheduled meeting.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the executive director. At least thirty calendar days advance written notice is required for the applicant to request a change in the date, time and/or place of the event or solicitation. If there is no conflict with another scheduled event or solicitation, the executive director may adjust the Facility Use Permit in regard to the date, time and/or place based upon the request.

(6) An event may be re-scheduled if the executive director determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The executive director may revoke any issued permit if this rule R131-2, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The applicant may cancel the permit and receive a full refund of fees and any deposits if written notice of cancellation is received by the executive director at least 30 calendar days prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

R131-2-6. General Requirements for Use of the Capitol Hill Complex.

(1) General Requirements.

(a) These are the requirements for use of the Capitol Hill Complex. This rule R131-2-6 shall apply to free speech activities, all other activities, groups and individuals using the Capitol Hill Complex.

(b) Except for state holidays, the Capitol building will be open to the general public Monday through Saturday from 8:00 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 6:00 p.m. Free speech activities may be conducted beyond the times identified in this subsection, as specified in rule R131-11. Unless otherwise authorized, Capitol Hill Facilities and Capitol Hill Grounds, including the Capitol Rotunda, are available for permitted use, activities or events from 8:00 a.m. to 11:00 p.m.

(c) Activities, except free speech activities, may be specifically denied during legislative sessions.

(d) No event may disrupt or interfere with any legislative session, legislative meeting, or the conduct of any state or governmental business, meeting or proceeding on the Capitol Hill Complex. No person shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of the Capitol Hill Complex.

(e) Levels of audible sound generated by any individual or group, indoors or on the plaza between the House and Senate Buildings, whether amplified or not, shall not exceed 85 decibels or a more restrictive limit established by applicable laws or ordinances. All outdoor events shall not exceed noise limits established by applicable laws or ordinances.

(f) Fire exits, staircases, doorways, roads, sidewalks, hallways and pathways shall not be blocked, and the efficient flow of pedestrian traffic shall not be obstructed at any time.

(g) Alteration and damage to the Capitol Hill Grounds including grass, plants, shrubs, trees, paving or concrete is prohibited.

(h) No object or substance of any kind shall be placed on or in the Capitol Plaza fountain. Standing on or in the fountain is prohibited.

(i) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or

refurbishing, shall be at the expense of the person(s) responsible for such damage or destruction.

(j) The consumption, distribution, or open storage of alcoholic beverages is prohibited.

(k) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the executive director. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(l) Camping is prohibited on the Capitol Hill Complex.

(m) Littering is prohibited.

(n) Commercial solicitation as defined in rule R131-10 is prohibited except as provided in rule R131-10.

(o) The use of a personal space heater is prohibited, except as provided in Subsection (i).

(i) Any person with a medical related condition may obtain approval by the Executive Director to use a personal space heater provided the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires a change in the standard room temperature and the use of the space heater meets the specifications in Subsection (ii).

(ii) If a space heater is approved by the Executive Director, the space heater shall not exceed 900 watts at its highest setting, be equipped with a self-limiting element temperature setting for the ceramic elements, have a tip-over safety device, be equipped with a built-in timer not to exceed eight hours per setting, be equipped with a programmable thermostat, and be equipped with an overheat protection feature.

(p) Tables, chairs, furniture, art and other objects in the Capitol Building shall only be moved by the Board's staff. No outside furniture, including tables or chairs, shall be allowed in the Capitol Building or any other facility on the Capitol Hill Complex without the advance written approval of the Executive Director.

(2) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the executive director.

(b) There shall be no posting or affixing of placards, banners, or signs to any part of any building or on the grounds. All signs or placards used at the Capitol Hill Complex shall be hand held.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the inside or outside of any facility or any portion of the grounds without the advance written approval of the Executive Director. Users must submit any decoration requests in writing to the Executive Director at least ten working days in advance.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performance, Section 76-10-1201 et seq.

(i) Leaving any item(s) against the exterior or interior walls, pillars, busts, statues, portraits or staircases of the Capitol building is prohibited.

(j) Balloons are not allowed inside the Capitol building.

(3) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the executive director.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all facilities and grounds in its original condition and appearance.

(4) Parking.

(a) Parking is limited. All posted parking restrictions on the Capitol Hill Complex, including reserved parking stalls, shall be observed.

(b) Parking for large vehicles or trailers shall require the prior approval of the executive director, which approval may be withheld if the large vehicle or trailer may interfere with the access or use of the Capitol Hill Complex.

(c) Except as expressly allowed by the executive director, overnight parking is prohibited.

(5) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will occupancy limits be exceeded. State Capitol security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the executive director by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons on the Capitol Hill Complex.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Title 26, Chapter 38, Utah Code shall be observed.

(d) Open flames, flammable fluids, candles, and explosives are prohibited.

(e) All persons must obey all applicable firearm laws, rules, and regulations.

(6) Security and Supervision.

(a) The Facility Use Application shall be reviewed by the senior ranking officer in charge of security for the Capitol Hill Complex, who shall determine the total number of uniformed security officers required for the proposed event based upon the nature of the event and the risk factors that are reasonably anticipated. Such determination by the senior ranking officer may increase the minimum number of required officers stated in this subsection. At a minimum: one uniformed security officer shall be required for any event consisting of 1-399 participants; two uniformed security officers shall be required for any event consisting of 400 or more participants. The applicant shall pay, in addition to all other required fees, the cost of the providing of all required security officers. These security fees may not be waived. This subparagraph shall not apply to free speech activities or state sponsored activities.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity;

(c) The activity sponsor (permit holder) is responsible for restricting the area of use by participants to the specified room and rest room areas of the reserved facilities.

(d) The activity sponsor (permit holder) shall control entrances to allow only authorized persons to enter any permitted facility or grounds.

(7) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the executive director for scheduling.

(b) Any photography, videotaping or filming, which includes wedding participants and family portraits, and which may take place anywhere in the facilities or grounds of the Capitol Hill Complex, will be required to comply with this Rule.

(i) Such photography, videotaping or filming, may be

scheduled by the executive director on Tuesday from 3 p.m. to 6 p.m., Friday from 12 p.m. to 6 p.m., and Saturday from 8 a.m. to 4 p.m. The executive director may allow a different time than specified herein upon written request and if the executive director determines that such other time can be accommodated by any necessary state personnel and does not conflict with state business and any other scheduled events. The executive director may reschedule as needed to accommodate events and state business whether scheduled or not.

(ii) In regard to inside the Capitol building, such photography, videotaping or filming may occur in the following areas: the East grand stairs, the West grand stairs, and the center of the Rotunda or other areas as approved by the executive director.

(iii) A processing fee shall be required for such photography, videotaping or filming. Additionally, a deposit may be required to cover the costs of any anticipated cleanup by the state after the session. These fees shall be described in the Fee Schedule approved by the Board.

(c) Any photography, videotaping or filming that is for the purpose of promoting any private business purposes, including television commercials, movies and photography for business advertising, shall be required to submit a Facility Use Application, pay the required fee from the Fee Schedule approved by the Board, and the time and location must be approved by the Executive Director.

(d) Unless specifically endorsed by an authorized official of the State of Utah, any photography, videotaping or filming shall not expressly or impliedly indicate any State of Utah endorsement of any product, service or any other aspect of the depiction.

(e) This subsection (7) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(8) Liability.

(a) The state, Board, executive director and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(9) Indemnification. Individuals and organizations using the Capitol Hill Complex do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(10) Food Services, Cafe Operator and Authorized Caterer Requirements.

(a) In General. Catering services on the Capitol Hill Complex shall be exclusively provided by the Cafe Operator and Authorized Caterer for those areas of the Capitol Hill Complex under the jurisdiction of the Board and to the extent expanded by the Legislative Management Committee or the Governor's Office, whichever is applicable. Multiple Authorized Caterers may be approved by the Executive Director. The Cafe Operator shall be responsible for all activities in the kitchen, servery, dining and conference rooms associated with the dining room, known as the "State Room," and located on the first floor of the East Senate Building. The

Cafe Operator shall have the exclusive right to provide food and beverages in the State Room, but may give permission for an Authorized Caterer to provide food and beverages in the State Room.

(b) Authorized Caterer Requirements. In order to qualify as an Authorized Caterer, an application must be approved by the Executive Director based on meeting the following requirements:

(i) Quality Control Policies. The Authorized Caterer must have quality control policies that are consistent with those set forth in the contract between the Board and the Cafe Operator. The Executive Director shall provide a form describing the minimum standards.

(ii) Application Form. A person or entity seeking to be an Authorized Caterer shall complete an application form approved by the Executive Director.

(iii) Insurance. A Certificate of Insurance shall be provided to the Executive Director for all of the following insurance and such insurance shall be maintained throughout the term of the catering event and for at least one year thereafter:

(A) The Authorized Caterer shall maintain Commercial General Liability insurance with per occurrence limits of at least \$1,000,000 and general aggregate limits of at least \$2,000,000. The selected Authorized Caterer shall also maintain, if applicable to the Authorized Caterer's operations or the specific activity, Business Automobile Liability insurance covering Caterer's owned, non-owned, and hired motor vehicles and/or Professional Liability (errors and omissions) insurance with liability limits of at least \$1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by the Board or the State of Utah.

(B) The Budget Development and Board Operations Subcommittee reserves the right at any time to require additional coverage from that required in this Rule, at the Authorized Caterer's expense for the additional coverage, based upon the specific risks presented by any proposed event and as recommended by the State's Risk Manager.

(C) The Authorized Caterer shall maintain all employee related insurances, in the statutory amounts, such as unemployment compensation, worker's compensation, and employer's liability, for its employees or volunteers involved in performing services pursuant to the Event. Such worker's compensation and employer's liability insurance shall be endorsed to include a waiver of subrogation against the State of Utah, the Board, its agents, officers, directors and employees. Authorized Caterer shall also maintain "all risk" property insurance at replacement cost applicable to the Authorized Caterer's property and/or its equipment.

(D) The Authorized Caterer's insurance carriers and policy provisions must be acceptable to the State of Utah's Risk Manager and remain in effect for the duration of the catering event and for at least one-year thereafter. The Board shall be named as an additional insured on the Commercial General Liability, the Professional Liability Insurance and all other required insurance policies. The Authorized Caterer will cause any of its subcontractors, who provide materials or perform services related to the catering service(s), to also maintain the insurance coverages and provisions listed above.

(E) The Authorized Caterer shall submit certificates of insurance as evidence of the above required coverage to the Executive Director prior to any entering into a contract related to the catering event. Such certificates shall provide the Board with thirty (30) calendar days written notice prior to the cancellation or material change of the applicable coverage, as evidenced by return receipt or certified mail, sent to the office of the Executive Director.

(iv) Indemnification: The Authorized Caterer shall hold

harmless, defend and indemnify the State of Utah, the Board and its officers, employees, and agents from and against any and all acts, errors or omissions which may cause damage to property or person(s), claims, losses, damages to the facilities or grounds of the Capitol Hill Complex, causes of action, judgments, damages and expenses including, but not limited to attorney's fees because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of the negligent acts or omissions or willful misconduct of the Authorized Caterer, or its agents, employees subcontractors or anyone for whom the Authorized Caterer may be liable, except where such claims, losses, causes of action, judgments, damages and expenses result solely from the negligent acts or omissions or willful misconduct of the Board, its officers, employees or agents.

(v) Record Keeping and Audit Rights: The Authorized Caterer shall maintain accurate accounting records for all goods and services provided, and shall retain all such records for a period of at least three (3) years from the date of the catering service. Upon reasonable notice and during normal business hours, the Board, or any of its duly authorized representatives, shall have access to and the right to audit any records or other documents pertaining to the Authorized Caterer. The Board's audit rights shall extend for a period of at least three (3) years from the date of the catering service.

(vi) Equal Opportunity: The Authorized Caterer shall not unlawfully discriminate against any employee, applicant for employment, or recipient of services.

(vii) Taxes: The Authorized Caterer shall be responsible for and pay all taxes which may be levied or incurred against the Authorized Caterer, including taxes levied or incurred against Authorized Caterer's income, inventory, property, sales, or other taxes.

(viii) Taxes: Board is Exempt: The Board is exempt from State of Utah sales and excise taxes. Exemption certification information appears on all purchase orders issued by the Board and such taxes will not apply to the Board.

(ix) Suspension/Debarment. The Authorized Caterer must notify the Executive Director within 10 calendar days if debarred or suspended by any governmental entity.

(x) Comply with Facility Use Rules. The Authorized Caterer shall comply with all of the Facility Use Rules enacted by the Board. Upon submission of any evidence to the Budget Development and Board Operations Subcommittee that the Authorized Caterer has not complied with a rule enacted by the Board, the Authorized Caterer shall be removed from eligibility for providing any catering service on the Capitol Hill Complex for a period of time as determined by the Subcommittee and consistent with the Board's rules on suspension and debarment.

(xi) Inspection. The Board or the Executive Director reserves the right to inspect the Authorized Caterer's facilities and operations with respect to use, safety, sanitation and the maintenance of premises which shall be maintained at a level satisfactory to the Board.

(xii) Energy. The Authorized Caterer shall exercise due care to keep utility services at a minimum, conserve the use of energies, and control the resulting costs.

(xiii) Food Handlers Permits. All of the Authorized Caterer's employees must have a current Food Handlers Permit. Documentation shall be promptly provided upon request of the Executive Director that established that all employees and temporary employees have valid Food Handlers Permits.

(xiv) The Authorized Caterer must have a locally grown food quality assurance program similar to that required of the Cafe Operator, which covers the food or products that are not provided by nationally recognized vendors.

(xv) Fees and costs associated with catering services, including the Cafe Operator or the Authorized Caterer, shall be

the responsibility of the Applicant and cannot be waived.

(xvi) Security.

(A) An Authorized Caterer shall provide to the Executive Director at least 24 hours in advance of any catered event, a list of all full-time and part-time employees that will be involved with the catering service on the Capitol Hill Complex.

(B) The Applicant shall be assessed a fee to provide for the presence of at least one Board employee to be present and to assist with ingress and egress from the Capitol Hill Complex, set-up, coordination and assurance of appropriate performance under this Rule as well as timely and appropriate clean-up after the event. This fee cannot be waived.

(11) Public Notices, Employee Postings, Required Use of Bulletin Boards.

(a) Notices of Capitol Hill Complex meetings, information or announcements related to state or other governmental business shall be posted at executive director approved locations. If any posting is to be done by a person not officed in the Capitol Hill Complex, the executive director shall be notified prior to the posting for approval of the location(s) and duration of the posting. Such persons are also responsible to remove the notices after the related meeting or activity within 24-48 hours.

(b) Posting of handbills, leaflets, circulars, advertising or other printed materials by state employees officed in the Capitol Hill Complex shall be on executive director approved bulletin boards.

(12) Enforcement of Rules.

(a) If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state capitol security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the Capitol Hill Complex.

(13) Waivers.

The Budget Development and Board Operations Subcommittee may waive the requirements of any provision of R131-2-6 provided that the provision of Rule R131-2-6 does not specifically indicate that it is non-waivable, upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Any approved waiver must still require compliance with all other provisions of this Rule. The waiver request must be submitted in writing to the Executive Director, for consideration by the Subcommittee at its next regularly scheduled meeting, and must accompany any required Facility Use Application. Conditions may be placed on any approved waiver by the Subcommittee to assure the appropriate protection of facilities, grounds and persons. An appeal to the Board of a denial or the conditions of such waiver may be filed and processed similarly to the denial of a Facility Use Application as described in R131-2-5.

R131-2-7. Fees and Charges.

(1) Fees.

(a) Application Fee. There shall be an application fee for a Facility Use Permit to cover the cost of processing the application, as specified on the Board's fee schedule. This fee is separate from rental and other fees.

(b) Rental of Space Fee. Persons using the Capitol Hill Complex pursuant to a Facility Use Permit shall be charged a rental of the space fee as specified on the Board's fee schedule.

(c) Security Fee. A security fee shall also be assessed as provided in this Rule, as specified on the Board's fee schedule.

(d) Rental of Equipment fee. A rental of equipment fee shall be assessed as specified on the Board's fee schedule.

(e) Room Setup Fees. The Board's fee schedule shall provide for room setup fees.

(f) Additional Board Staff fee. If an Applicant requests that additional Board staff be present for an event, then an additional fee shall be assessed.

(g) Authorized Caterer Fee. Any fee or costs of an Authorized Caterer are the responsibility of the Applicant. The State of Utah, the Capitol Preservation Board, State Officials, employees and anyone for whom the State may be liable, shall have no liable whatsoever for such fee or costs owed to the Authorized Caterer.

(h) A "Schedule of Costs and Fees" is available during regular working hours at the executive director's office. This Schedule of Costs and Fees shall include all the fees referred to in this Rule R131-2-7. Additionally, fees may be assessed for technology assistance, recording, insurance coverage, cleaning and repairs. The Schedule of Costs and Fees may have special fees for community service activities, state employee events, including state employee recognition events, state retirement events, or state employee holiday/social events. There are no fees for free speech activities, except costs for requested use of state equipment or supplies shall be assessed in accordance with the Schedule of Costs and Fees. State Sponsored Activities shall not be required to pay any fees under this Rule.

R131-2-8. Specific Facilities.

(1) The following applies to all events and solicitations, except for free speech activities.

(a) Use of caucus rooms, committee rooms, the House of Representatives or Senate Chambers will be separately administered by the legislative branch. Requests for all other rooms must be submitted in writing to the executive director for scheduling and staffing. If the requested room is under the control of the Governor, the judiciary, or other elected officials, the executive director shall forward the request to the appropriate representative of such branch of government or elected official. The executive director will notify the applicant of the approval or denial of the requested space by the approving organization.

(b) The State Office Building auditorium shall be available to all state entities on a first-come, first-serve basis for governmental functions. All state entities shall reserve this facility in advance with the executive director.

(c) After-hours access to the State Office Building shall be through the first floor south doors.

(d) During legislative sessions, legislative meetings or other legislative activities, use of the legislative space will be subject to the applicable legislative rules.

(e) The Gold Room and all other areas controlled by the Governor in the Capitol building shall be available in accordance with Section 67-1-16.

R131-2-9. Use of White Community Memorial Chapel.

(1) In addition to the provisions above, the following rules for the White Community Memorial Chapel shall be observed:

(a) Fire Marshal occupancy limits shall not be exceeded.

(b) The kitchen is for the exclusive use of the Preferred Caterer. No Private Caterer shall be allowed to use the White Community Memorial Chapel and its grounds. Users may use the full rest room facilities.

(c) The White Community Memorial Chapel will be available from 7:00 a.m. until 12:00 midnight, seven days a week, 365 days a year unless otherwise specified by the Board's Budget Development and Board Operations Subcommittee.

(d) If no wedding or event is scheduled the day before the scheduled wedding or event, the applicant may be allowed to use the Chapel the day before from noon to midnight for rehearsal or decorative purposes for an additional fee as identified on the Board's fee schedule.

(e) All users must complete the Facility Use Permit Application and comply with all the permit requirements listed under rules R131-2 and R131-10.

R131-2-10. Procedure for Receiving and Deciding Complaints Regarding the Access or Use of the Capitol Hill Complex.

(1) Any person that has a complaint regarding the access or use of the Capitol Hill Complex may file such complaint in writing to the executive director.

(2) The executive director will issue a written determination within thirty calendar days of the filing of the complaint or such longer time period as agreed to by the complainant.

(3) If the executive director does not issue a determination within the time period for such determination, then the complainant may file a written appeal no later than ten calendar days after the expiration of such time period. The written appeal shall be delivered to the office of the executive director and shall be considered by the Board's Budget Development and Board Operations Subcommittee chair in a manner determined appropriate by the chair.

(4) The chair will issue a written determination within thirty calendar days of the filing of the appeal or such longer time period as agreed to by the complainant.

(5) If the chair does not issue a determination within the time period for the chair's determination, the complainant may file a written appeal to the Board no later than ten calendar days after the expiration of such time period. The written appeal to the Board shall be delivered to the office of the executive director.

(6) Upon the filing of a timely appeal to the Board, the appeal shall be scheduled at the next regularly scheduled meeting of the Board.

(7) This is considered to be an administrative remedy for complaints regarding the access or use of the Capitol Hill Complex, and to the extent allowed by law, shall be considered an administrative remedy that must be pursued prior to any legal action.

R131-2-11. Fees and Charges During Legislative Session.

During the regular Utah Legislative Session, from the hours of 7:00 a.m. to 5:30 p.m., Monday through Friday, the facility use fees for specific rooms and spaces shall be reduced as follows:

(1) Facilities on Capitol Hill are available on a first come first serve basis as defined in this Rule R131-2, subject to preemption for State Sponsored Activities and any need to reserve or close off spaces for security reasons as advised by the Department of Public Safety.

(a) Subject to all the other provisions of this Rule R131-2-11, the following rooms may be reserved with no room rental being assessed:

(i) Kletting Room located in the Senate Building;

(ii) Olmstead Room located in the Senate Building;

(iii) Spruce Room located in the Senate Building;

(iv) Beehive Room located in the Senate Building;

(v) Seagull Room located in the Senate Building;

(vi) Copper Room located in the Senate Building;

(vii) Rooms B110 and 1112 in the State Office Building;

(viii) Room 130, the Multipurpose/Public Lounge located in the Capitol;

(ix) Room 170 located in the Capitol; and

(x) Room 210 located in the Capitol.

(b) These rooms identified in R131-2-11(2) may be reserved when the Utah Legislature is meeting in regular session in 4 hour blocks/day for a maximum of 8 total hours per week, and not concurrent.

(c) The use of the State Room in the East Senate Building

is to be for public use except for certain hours established by the Executive Director when the public does not ordinarily use the State Room.

(2) The State Office Building Auditorium may be reserved during the time the Utah Legislature is meeting in regular session in two hour blocks one day a week, but is subject to the same rental fees that would apply at other times of the year and priority shall be provided to those events that are related to the regular session of the Utah Legislature.

(3) The Capitol Rotunda or Hall of Governors facilities may be reserved during the hours the Utah Legislature is meeting in regular session with no fee for the space rental itself being assessed subject to the following:

(a) The reservation shall be for a maximum of two hours which must be in one block of hours; and

(b) Priority shall be given to those events that are related to the regular session of the Utah Legislature.

(4) This Rule R131-2-11 does not prohibit the rental of these rooms for the standard fees when rental is beyond the time restrictions set forth in this Rule R131-2-11.

(a) Notwithstanding any other provision of this Rule R131-2-11, Registration (Application), Janitorial and all other associated set up and security fees that would apply if the rental was not during the Utah Legislature's regular session, shall be assessed.

(b) Those persons or entities reserving or using the facilities shall leave the space as they found it in a clean and orderly manner and comply with all other provisions of the Facility Use Rules, R131-2.

(c) The janitorial fee will only be assessed if, in the opinion of the Executive Director, that the work required to prepare the room for the next user is beyond that what is expected and reasonable. Charges for any such required janitorial services shall be assessed in half hour increments of \$50/hour per janitorial worker.

(d) The Registration (Application) fee shall be assessed at the rate of one rental even if the Registration (Application) includes more than one reservation. Multiple reservations on one application form for reservations during the Utah Legislature's regular session are encouraged in order to best coordinate all the reservations.

KEY: public buildings, facilities use
August 21, 2013
Notice of Continuation April 7, 2010

63C-9-101 et seq.

R152. Commerce, Consumer Protection.**R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rules.****R152-32a-1. Authority.**

These rules are promulgated pursuant to Utah Code 13-2-5(1) and 13-32a-102.5(1) to facilitate the orderly administration of the Pawnshop and Secondhand Merchandise Transaction Information Act, Utah Code Title 13, Section 32a.

R152-32a-2. Exempt Businesses.

In accordance with Section 13-32a-112.5, the definition of "Secondhand merchandise dealer" does not include:

- (1) Scrap metal processors as defined by Section 76-10-901(10);
- (2) Dealers of used appliances; and
- (3) Dealers of used furniture.

KEY: pawnshops, consumer protection, second hand merchandise dealer

August 9, 2010

13-2-5

Notice of Continuation August 5, 2013

13-32a-12.5

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

R156-1-101. Title.

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

R156-1-102. Definitions.

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

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

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

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

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

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

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

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

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

58-1-404.

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

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

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

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

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

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

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

(a) Mitigating circumstances include:

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

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

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

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

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

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

(vii) remorse.
 (b) The following factors may not be considered as mitigating circumstances:

- (i) forced or compelled restitution;
- (ii) withdrawal of complaint by client or other affected persons;
- (iii) resignation prior to disciplinary proceedings;
- (iv) failure of injured client to complain;
- (v) complainant's recommendation as to sanction; and
- (vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Levels of supervision are defined as follows:

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

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

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

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

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

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

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

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

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

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

R156-1-103. Authority - Purpose.

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

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

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized:

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

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

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

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

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

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

(i) a national, state or local emergency;

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

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

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

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

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

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

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

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

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

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services

Commission, the designation of presiding officers is clarified or established as follows:

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

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

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

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

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

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

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

(i) formal adjudicative proceedings described in Subsection R156-46b-201(1)(c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-15A-210(1) through (4); and

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

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

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

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

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

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

(a) Commission.

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

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

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

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

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

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

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

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

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

designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

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

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

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

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

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

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

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

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

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

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

R156-1-110. Issuance of Investigative Subpoenas.

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

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

(b) Approved subpoenas shall be issued under the seal of

the Division and the signature of the subpoena authority.

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

(3)(a) Service may be made:

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

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

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

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

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

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

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

(a) A motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than ten days after service of the investigative subpoena.

(b) A response by the Division to a motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than five business days after receipt of a motion to quash or modify an investigative subpoena.

(c) No final reply by the recipient of an investigative subpoena who files a motion to quash or modify shall be permitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when

considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

- (1) aggravating circumstances, as defined in Subsection R156-1-102(2);
- (2) mitigating circumstances, as defined in Subsection R156-1-102(16);
- (3) the degree of risk to the public health, safety or welfare;
- (4) the degree of risk that a conduct will be repeated;
- (5) the degree of risk that a condition will continue;
- (6) the magnitude of the conduct or condition as it relates to the harm or potential harm;
- (7) the length of time since the last conduct or condition has occurred;
- (8) the current criminal probationary or parole status of the applicant or licensee;
- (9) the current administrative status of the applicant or licensee;
- (10) results of previously submitted applications, for any regulated profession or occupation;
- (11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;
- (12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;
- (13) psychological evaluations; or
- (14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-305. Inactive Licensure.

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

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

- (a) advanced practice registered nurse;
- (b) architect;
- (c) audiologist;
- (d) certified nurse midwife;
- (e) certified public accountant emeritus;
- (f) certified registered nurse anesthetist;
- (g) certified court reporter;
- (h) certified social worker;
- (i) chiropractic physician;
- (j) clinical mental health counselor;
- (k) clinical social worker;
- (l) contractor;
- (m) deception detection examiner;
- (n) deception detection intern;
- (o) dental hygienist;
- (p) dentist;
- (q) direct-entry midwife;
- (r) genetic counselor;
- (s) health facility administrator;
- (t) hearing instrument specialist;
- (u) landscape architect;
- (v) licensed advanced substance use disorder counselor;
- (w) marriage and family therapist;
- (x) naturopath/naturopathic physician;
- (y) optometrist;
- (z) osteopathic physician and surgeon;
- (aa) pharmacist;
- (bb) pharmacy technician;

- (cc) physical therapist;
- (dd) physician assistant;
- (ee) physician and surgeon;
- (ff) podiatric physician;
- (gg) private probation provider;
- (hh) professional engineer;
- (ii) professional land surveyor;
- (jj) professional structural engineer;
- (kk) psychologist;
- (ll) radiology practical technician;
- (mm) radiologic technologist;
- (nn) security personnel;
- (oo) speech-language pathologist;
- (pp) substance use disorder counselor; and
- (qq) veterinarian.

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

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

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

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

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

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

R156-1-308a. Renewal Dates.

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

TABLE
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Advanced Practice Registered Nurse-CRNA	January 31	even years
(4) Architect	May 31	even years
(5) Athlete Agent	September 30	even years
(6) Athletic Trainer	May 31	odd years
(7) Audiologist	May 31	odd years
(8) Barber	September 30	odd years
(9) Barber School	September 30	odd years
(10) Building Inspector	November 30	odd years
(11) Burglar Alarm Security	March 31	odd years
(12) C.P.A. Firm	September 30	even years
(13) Certified Court Reporter	May 31	even years
(14) Certified Dietitian	September 30	even years
(15) Certified Medical Language Interpreter	March 31	odd years
(16) Certified Nurse Midwife	January 31	even years
(17) Certified Public Accountant	September 30	even years
(18) Certified Social Worker	September 30	even years
(19) Chiropractic Physician	May 31	even years
(20) Clinical Mental Health Counselor	September 30	even years
(21) Clinical Social Worker	September 30	even years
(22) Construction Trades Instructor	November 30	odd years

(23) Contractor	November 30	odd years
(24) Controlled Substance License	Attached to primary license renewal	
(25) Controlled Substance Precursor	May 31	odd years
(26) Controlled Substance Handler	September 30	odd years
(27) Cosmetologist/Barber	September 30	odd years
(28) Cosmetology/Barber School	September 30	odd years
(29) Deception Detection	November 30	even years
(30) Dental Hygienist	May 31	even years
(31) Dentist	May 31	even years
(32) Direct-entry Midwife	September 30	odd years
(33) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
(34) Electrologist	September 30	odd years
(35) Electrology School	September 30	odd years
(36) Elevator Mechanic	November 30	even years
(37) Environmental Health Scientist	May 31	odd years
(38) Esthetician	September 30	odd years
(39) Esthetics School	September 30	odd years
(40) Factory Built Housing Dealer	September 30	even years
(41) Funeral Service Director	May 31	even years
(42) Funeral Service Establishment	May 31	even years
(43) Genetic Counselor	September 30	even years
(44) Health Facility Administrator	May 31	odd years
(45) Hearing Instrument Specialist	September 30	even years
(46) Internet Facilitator	September 30	odd years
(47) Landscape Architect	May 31	even years
(48) Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
(49) Licensed Practical Nurse	January 31	even years
(50) Licensed Substance Use Disorder Counselor	May 31	odd years
(51) Marriage and Family Therapist	September 30	even years
(52) Massage Apprentice, Therapist	May 31	odd years
(53) Master Esthetician	September 30	odd years
(54) Medication Aide Certified	March 31	odd years
(55) Nail Technologist	September 30	odd years
(56) Nail Technology School	September 30	odd years
(57) Naturopath/Naturopathic Physician	May 31	even years
(58) Occupational Therapist	May 31	odd years
(59) Occupational Therapy Assistant	May 31	odd years
(60) Optometrist	September 30	even years
(61) Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
(62) Outfitter/Hunting Guide	May 31	even years
(63) Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
(64) Pharmacist	September 30	odd years
(65) Pharmacy Technician	September 30	odd years
(66) Physical Therapist	May 31	odd years
(67) Physical Therapist Assistant	May 31	odd years
(68) Physician Assistant	May 31	even years
(69) Physician and Surgeon, Online Prescriber	January 31	even years
(70) Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
(71) Podiatric Physician	September 30	even years
(72) Pre Need Funeral Arrangement Sales Agent	May 31	even years
(73) Private Probation Provider	May 31	odd years
(74) Professional Engineer	March 31	odd years
(75) Professional Geologist	March 31	odd years
(76) Professional Land Surveyor	March 31	odd years
(77) Professional Structural Engineer	March 31	odd years
(78) Psychologist	September 30	even years
(79) Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
(80) Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
(81) Registered Nurse	January 31	odd years
(82) Respiratory Care	September 30	even years

(83) Practitioner Security Personnel	November 30	even years
(84) Social Service Worker	September 30	even years
(85) Speech-Language Pathologist	May 31	odd years
(86) Veterinarian	September 30	even years
(87) Vocational Rehabilitation Counselor	March 31	odd years

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

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

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

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

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

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

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

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

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

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

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

(k) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably

expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

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

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

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

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

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

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

The procedures for renewal of licensure shall be as follows:

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

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

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

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

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

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

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

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

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related

condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Upon completion of the audit or investigation, the

Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) provide documentation that the applicant has continuously, since the expiration of the applicant's license in

Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An applicant for relicensure following revocation of licensure shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Cheating Defined.

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

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

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

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

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

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

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

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

(3) Action Upon Detection of Cheating.

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

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

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

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

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

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

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

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

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

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

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

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

for diversion;

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

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

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

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

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

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

R156-1-404d. Diversion - Procedures.

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

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

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

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

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

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

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

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

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

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

Payments of fees shall be a condition of completing the program of diversion.

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

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

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

R156-1-502. Administrative Penalties.

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

TABLE	
FINE SCHEDULE	
FIRST OFFENSE	
Violation	Fine
58-1-501(1)(a)	\$ 500.00
58-1-501(1)(c)	\$ 800.00
58-1-501(1)(o)	\$ 0 - \$250.00
SECOND OFFENSE	
58-1-501(1)(a)	\$1,000.00
58-1-501(1)(c)	\$1,600.00
58-1-501(1)(o)	\$251.00 - \$500.00
THIRD OFFENSE	

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).

(2) Citations shall not be issued for third offenses, except

in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor or chief investigator may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-1-503. Reporting Disciplinary Action.

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

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

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

(1) the appropriate standards of care for performing nonablative cosmetic medical procedures;

(2) physiology of the skin;

(3) skin typing and analysis;

(4) skin conditions, disorders, and diseases;

(5) pre and post procedure care;

(6) infection control;

(7) laser and light physics training;

(8) laser technologies and applications;

(9) safety and maintenance of lasers;

(10) cosmetic medical procedures an individual is permitted to perform under this title;

(11) recognition and appropriate management of complications from a procedure; and

(12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:

(a) American Heart Association;

(b) American Red Cross or its affiliates; or

(c) American Safety and Health Institute.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

August 22, 2013

Notice of Continuation January 5, 2012

58-1-106(1)(a)

58-1-308

58-1-501(2)

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule.
R156-11a-101. Title.

This rule is known as the "Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(34)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Section R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(2) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion, for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(3) "BCA acid" means bicloroacetic acid.

(4) "Body wraps", as used in Subsection 58-11a-102(34)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(5) "Chemical exfoliation", as defined in Subsections 58-11a-102(34)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(6) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(7) "Dermaplane" means the use of a scalpel or bladed instrument under the direct supervision of a health care practitioner to shave the upper layers of the stratum corneum.

(8) "Direct supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(a).

(9) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours;

and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(10) "Exfoliation" means the sloughing off of non-living skin cells by superficial and non-invasive means.

(11) "Extraction" means the following:

(a) "advanced extraction", as used in Subsections 58-11a-102(34)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin;

(b) "manual extraction", as used in Subsection 58-11a-102(25)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(12) "Galvanic current" means a constant low-voltage direct current.

(13) "General supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(c).

(14) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, a podiatrist under Title 58, Chapter 5A, Podiatric Physician Licensing Act, or a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Practice Act, acting within the appropriate scope of practice.

(15) "Hydrotherapy", as used in Subsection 58-11a-102(34)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(16) "Indirect supervision" means the supervising instructor who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(b).

(17) "Limited chemical exfoliation" means a non-invasive chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(18) "Lymphatic massage", as used in Subsections 58-11a-102(34)(a)(ii) and 58-11a-302(11)(e), means a method using a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.

(19) "Manipulating", as used in Subsection 58-11a-102(28)(a), means applying a light pressure by the hands to the skin.

(20) "Microdermabrasion", as used in Subsection 58-11a-102(34)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(21) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(22) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(23) "TCA acid" means trichloroacetic acid.

(24) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

R156-11a-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 11a.

R156-11a-104. Organization - Relationship to Rule R156-1.

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

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school, pursuant to Subsections 58-11a-102(16) through (19), until the application is approved and a license issued.

R156-11a-302. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Section 58-11a-302 and whether the applicant has been involved in unprofessional conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, may disqualify an applicant from becoming licensed; and

(b) a criminal conviction for the following crimes may disqualify an applicant from becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-11a-302, the examination requirements for licensure are established as follows:

(1) Applicants for each classification listed below shall pass within one year prior to the date of application, the respective examination with a passing score of at least 75% as determined by the examination provider.

(a) Applicants for licensure as a barber shall pass the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations.

(b) Applicants for licensure as a cosmetologist/barber shall pass the NIC Cosmetology/Barber Theory and Practical Examinations.

(c) Applicants for licensure as an electrologist shall pass the NIC Electrologist Theory and Practical Examinations.

(d) Applicants for licensure as a basic esthetician shall pass the NIC Esthetics Theory and Practical Examinations.

(e) Applicants for licensure as a master esthetician shall pass the NIC Master Esthetician Theory and Practical Examinations.

(f) Applicants for licensure as a barber instructor, cosmetologist/barber instructor, electrology instructor, esthetician instructor, or nail technology instructor shall pass the NIC Instructor Examination.

(g) Applicants for licensure as a nail technician shall pass the NIC Nail Technician Theory and Practical Examinations.

(2) Applicants for licensure shall pass with a score of at

least 75% the Utah Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Law and Rule Examination.

(3) Any substantially equivalent theory, practical or instructor examination approved by the licensing authority of any other state is acceptable for any of the examinations specified in Subsection(1).

R156-11a-302b. Qualifications for Licensure - Equivalency of Foreign School Education.

In accordance with Subsection 58-11a-302(17):

(1) An applicant shall submit documentation of education equivalency from a foreign school education to a Utah licensed barber school, cosmetology/barber school, esthetics school, electrology school, or nail technology school.

(2) The documentation shall be an education or credential evaluation from one of the following approved credential evaluation services:

(a) Josef Silny and Associates Incorporated, International Education Consultants; or

(b) Educational Credential Evaluators Incorporated.

R156-11a-302c. Qualifications for Licensure - Acceptance of Credit Hours.

In accordance with Subsection 58-11a-302(18), credit hours toward graduation may be accepted as follows:

(1) A licensed school may accept credit hours toward the curriculum set forth in Sections R156-11a-700, R156-11a-701, R156-11a-702, R156-11a-703, R156-11a-704 and R156-11a-705 from a licensee under Title 58, Chapter 11a, based upon the licensee's schooling, apprenticeship, or experience.

(2) The credit hours accepted toward graduation shall not exceed the number of hours required in Subsections 58-11a-302(1)(d)(i), 58-11a-302(4)(d)(i), 58-11a-302(7)(d), 58-11a-302(10)(d)(i), 58-11a-302(11)(d)(i), and 58-11a-302(14)(d)(i) for that professional license in Utah.

R156-11a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308a.

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

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or in an approved barber, cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-706;

(9) using any device classified by the Food and Drug Administration as a prescriptive medical device without the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice;

(10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;

(11) failing as a supervisor to provide the appropriate level of supervision while a basic esthetician, an electrologist or a master esthetician under supervision is performing service within the scope of practice as set forth in Subsections 58-11a-102(25), 58-11a-102(28) and 58-11a-102(31);

(12) performing services within the scope of practice as a basic esthetician, a master esthetician or an electrologist without having the appropriate level of supervision as required by Subsection 58-11a-102(25), 58-11a-102(28) and 58-11a-102(31);

(13) violating any standard established in Sections R156-11a-601 through R156-11a-612;

(14) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

(15) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11a-502(1), (2) or (4), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a.

(1) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1).

First Offense: \$200

Second Offense: \$300

(2) Knowingly employing any other person to engage in or practice or attempt to engage in or practice any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2).

First Offense: \$400

Second Offense: \$800

(3)(a) Using as a nail technician a solution composed of at least 10% methyl methacrylate on a client in violation of Subsection 58-11a-502(4)

First Offense: \$500

Second Offense: \$1,000

(b) Possessing as a nail technician a solution composed of at least 10% methyl methacrylate in violation of Subsection 58-11a-502(4)

First Offense: \$500

Second Offense: \$1,000

(4) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4)(h).

(5) If multiple offenses are cited on the same citation, the

fine shall be determined by evaluating the most serious offense.

(6) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(7) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), the accreditation standards for a barber school, a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting commissions recognized by the Utah Board of Regents for post secondary schools.

(2) Each school shall maintain and keep the accreditation current.

(3) A newly licensed school shall pursue accreditation under this section using the following procedure:

(a) A new school shall:

(i) submit an application for candidate status for accreditation to an accrediting commission within one month of the date when the school was licensed by the Division as a barber school, a cosmetology/barber school, an electrology school, an esthetics school, or a nail technology school;

(ii) provide evidence received from the accrediting commission to the Division of achieving candidate status within 12 months of the date the school was licensed;

(iii) file an "Exemption of Registration as a Post-Secondary Proprietary School" form with the Division of Consumer Protection pursuant to Sections 13-34-101 and R152-34-1;

(iv) comply with all applicable accreditation standards during the pendency of its application for accreditation status; and

(v) have 24 months following the date of achieving candidate status to be approved for accreditation.

(b)(i) If the entity is a newly licensed school, but the facility is operated on essentially the same premises with essentially the same staff then the newly licensed school shall meet the accreditation deadlines that were applicable to the predecessor licensed school.

(ii) The determination of whether a newly licensed school entity has succeeded a predecessor shall be made by the Division.

(4) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63G-4-502.

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsections 58-11a-302(3)(c)(iii), (6)(c)(iii), (9)(c)(iii), (13)(c)(iii) and (16)(c)(iii), the standards for the physical facility of a barber, cosmetology/barber, electrology, esthetics, or nail technology schools shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards, each facility shall have the following available:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall provide a list of all basic kit supplies needed by each student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standards for Prohibition Against Operation as a Barbershop, Salon or Spa.

(1) In accordance with Subsections 58-11a-302(3)(c)(iii), (6)(c)(iii), (9)(c)(iv), (13)(c)(iii), and (16)(c)(iii), when a barbershop, professional salon or spa is under the same ownership or is otherwise associated with a school, the barbershop, salon or spa shall maintain separate operations from the school.

(2) If the barbershop, salon or spa is located in the same building as a school, separate entrances and visitor reception areas are required. The barbershop, salon or spa shall also use separate public information releases, advertisements and names than that used by the school.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), (6)(c)(iii) and (iv), (9)(c)(iii) and (iv), (13)(c)(iii) and (iv), (16)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall:

(a) notify the Division within 15 days by registered or certified mail; and

(b) name a trustee who shall be responsible for:

(i) maintaining the student records for a minimum period of ten years; and

(ii) providing information such as accumulated student hours and dates of attendance during that time.

(2) Schools shall provide a copy of the written contract prepared in accordance with Section R156-11a-607 to each student.

(3) Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(4) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(5) Schools shall keep a daily written record of student attendance.

(6) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class. Schools may require a student to take a refresher course or retake a class toward graduation based upon an evaluation of the student's level of competency.

(7) In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal

training that pertains to the genitals or anus of a client.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), standards for the protection of barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall include the following:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the amount of hours to be accepted toward graduation based upon an evaluation of the student's level of training.

(3) Hours obtained while enrolled in a barber, cosmetology/barber, esthetics, master esthetics, or nail technology apprenticeship shall not be used to satisfy any of the required hours of school instruction.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall include specifically, or by reference to the school's catalogue or handbook, or both, the following:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract and catalogue or handbook, or both, for each student and shall provide a copy of the contract and catalogue or handbook, or both to the Division upon request.

R156-11a-608. Standards for Staff Requirements of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), the staff requirement for barber, cosmetology/barber, electrology, esthetics and nail technology schools shall include:

(1) Schools shall be required to have, as a minimum, one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the number of licensed instructors required to be present.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections 58-11a-302(2)(e) and (f), (5)(e) and (f), (8)(e) and (f), (12)(e) and (f), and (15)(e) and (f), barber, cosmetology/barber, electrology, esthetics, and nail technology instructors may only teach in those areas for which

they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(9), an individual licensed as a cosmetology/barbering instructor may teach barbering, basic esthetics or nail technology in a licensed barber school, a licensed cosmetology/barber school or a licensed nail technology school or in an approved barber, cosmetology/barber, basic esthetics or nail technology apprenticeship, provided the individual can demonstrate the same experience as required in Subsection (1).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified.

R156-11a-610. Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(b) and (31)(a)(i)(C) and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

- (a) phenol;
- (b) bichloroacetic acid;
- (c) resorcinol, except as provided in Subsection (4)(b);

and

(d) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining or layering of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 15% or less.

(4) Chemical exfoliation for a master esthetician includes:

(a) acids allowed for a basic esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%;

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), may be used in a concentration of not more than 15%, but no manual, mechanical or acid exfoliation can be used prior to treatment unless under the general supervision of a licensed health care practitioner; and

(f) vitamin based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven days unless under the general supervision of a licensed health care practitioner.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

- (i) courses of instruction;
- (ii) specialized training;
- (iii) on-the-job experience; and

(iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.

(b) A licensee shall provide the documentation required by Subsection

(6)(a) to the Division upon request.

(7) A licensee may not use an acid or perform a chemical exfoliation for which the licensee is not competent to use or perform through training and experience and as documented in

accordance with Subsection (6).

(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsections 58-11a-102(31)(a)(i)(G)(II) and (H), the standards for approval of mechanical or electrical apparatus shall be:

(1) No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(2) Dermaplane procedures, dermabrasion procedures, blades, knives, and lancets are prohibited except for:

- (a) advanced pedicures;
- (b) advanced extraction of impurities from the skin; and
- (c) dermaplane procedures for advanced exfoliation as defined in Subsection R156-11a-102(7) by a master esthetician under direct supervision of a health care practitioner.

(3) The use of any procedure in which human tissue is cut or altered by laser energy or ionizing radiation is prohibited for all individuals licensed under this chapter unless it is within the scope of practice for the licensee and under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(4) To be approved, a microdermabrasion machine must:

(a) be specifically labeled for cosmetic or esthetic purposes;

(b) be a closed-loop vacuum system that uses a tissue retention device; and

(c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(25)(b) and (31)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant or using a microdermabrasion machine:

(a) the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and

(b) the benefits and risks of the procedure.

R156-11a-700. Curriculum for Barber Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), the curriculum for a barber school shall consist of 1,000 hours of instruction in the following subject areas:

(1) introduction consisting of:

- (a) history of barbering;
- (b) an overview of the barber curriculum;
- (2) personal, client and shop safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;
 - (c) health risks to the barber;
- (3) business and shop management including:
 - (a) developing a clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations;
 - (f) advertising;

- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies;
 - (c) tax laws;
 - (5) human immune system;
 - (6) diseases and disorders of the hair and scalp including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination;
 - (e) infection control;
 - (7) implements, tools and equipment for barbering;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of barbering;
 - (11) chemistry for barbering;
 - (12) analysis of the hair and scalp;
 - (13) properties of the hair, skin, and scalp;
 - (14) basic hairstyling and hair cutting including:
 - (a) draping;
 - (b) clipper variations;
 - (c) scissor cutting; and
 - (d) wet and thermal styling;
 - (15) shaving and razor cutting;
 - (16) mustache and beard design;
 - (17) elective topics; and
 - (18) the Utah Barber Examination review.

R156-11a-701. Curriculum for Electrology Schools.

In accordance with Subsection 58-11a-302(9)(c)(iv), the curriculum for an electrology school shall consist of 600 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) the history of electrology; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the electrologist;
- (3) business and salon management including:
 - (a) developing a clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising;
- (4) legal issues including:
 - (a) malpractice and liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
 - (5) human immune system;
 - (6) diseases and disorders of hair and skin;
 - (7) implements, tools, and equipment for electrology;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of electrology;
 - (11) analysis of the skin;
 - (12) physiology of hair and skin;
 - (13) medical definitions including:
 - (a) dermatology;
 - (b) endocrinology;
 - (c) angiology; and
 - (d) neurology;
 - (14) evaluating the characteristics of skin;
 - (15) evaluating the characteristics of hair;
 - (16) medications affecting hair growth including:
 - (a) over-the-counter preparations;
 - (b) anesthetics; and

- (c) prescription medications;
- (17) contraindications;
- (18) disease and blood-borne pathogens control including:
 - (a) pathogenic bacteria and non-bacterial causes; and
 - (b) American Electrology Association (AEA) infection control standards;
- (19) principles of electricity and equipment including:
 - (a) types of electrical currents, their measurements and classifications;
 - (b) Food and Drug Administration (FDA) approved needle type epilation equipment;
 - (c) FDA approved hair removal devices; and
 - (d) epilator operation and care;
- (20) modalities for need type electrolysis including:
 - (a) needle/probe types, features, and selection;
 - (b) insertions, considerations, and accuracy;
 - (c) galvanic multi needle technique;
 - (d) thermolysis manual and flash technique;
 - (e) blend and progressive epilation technique; and
 - (f) one and two handed techniques;
- (21) clinical procedures including:
 - (a) consultation;
 - (b) health/medical history;
 - (c) pre and post treatment skin care;
 - (d) normal healing skin effects;
 - (e) tissue injury and complications;
 - (f) treating ingrown hairs;
 - (g) face and body treatment;
 - (h) cosmetic electrology; and
 - (i) positioning and draping;
- (22) elective topics; and
- (23) Utah Electrology Examination review.

R156-11a-702. Curriculum for Esthetics School - Basic Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school basic esthetician program shall consist of 600 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) history of esthetics; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the basic esthetician;
- (3) business and salon management including:
 - (a) developing a clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising.
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
 - (5) human immune system;
 - (6) diseases and disorders of the skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination; and
 - (e) infection control;
 - (7) implements, tools, and equipment for basic esthetics including:
 - (a) high frequency or galvanic current; and
 - (b) heat lamps;

- (8) first aid;
- (9) anatomy;
- (10) science of basic esthetics;
- (11) analysis of the skin;
- (12) physiology of the skin;
- (13) facials, manual and mechanical;
- (14) limited chemical exfoliation including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) chemical reactions;
- (15) chemistry for basic esthetics;
- (16) temporary removal of superfluous hair by waxing;
- (17) treatment of the skin;
- (18) packs and masks;
- (19) Aroma therapy;
- (20) application of makeup including:
 - (a) application of artificial eyelashes;
 - (b) arching of the eyebrows; and
 - (c) tinting of the eyelashes and eyebrows;
- (21) medical devices;
- (22) cardio pulmonary resuscitation (CPR);
- (23) basic facials;
- (24) chemistry of cosmetics;
- (25) skin treatments, manual and mechanical;
- (26) massage of the face and neck;
- (27) natural nail manicures and pedicures;
- (28) elective topics; and
- (29) Utah Esthetic Examination review.

R156-11a-703. Curriculum for Esthetics School -- Master Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for a basic esthetician program, the remaining 600 of which shall be in the following subject areas:

- (1) introduction consisting of:
 - (a) history of esthetics and master esthetics; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the master esthetician;
- (3) business and salon management consisting of:
 - (a) developing clients;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) advertising; and
 - (f) public relations;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) the human immune system;
- (6) diseases and disorders of the skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) contamination; and
 - (e) infection controls;
- (7) implements, tools and equipment for master esthetics;
- (8) first aid;
- (9) anatomy;
- (10) science of master esthetics;
- (11) analysis of the skin;
- (12) physiology of the skin;
- (13) advanced facials, manual and mechanical;

- (14) chemistry for master esthetics;
- (15) advanced chemical exfoliation, including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) reactions;
- (16) temporary removal of superfluous hair by waxing and advanced waxing;
- (17) advanced pedicures;
- (18) advanced Aroma therapy;
- (19) the aging process and its damage to the skin;
- (20) medical devices;
- (21) cardio pulmonary resuscitation (CPR) training;
- (22) hydrotherapy;
- (23) advanced mechanical and electrical devices including instruction in using:
 - (a) sanding and microdermabrasion techniques;
 - (b) galvanic or high-frequency current for treatment of the skin;
 - (c) devices equipped with a brush to cleanse the skin;
 - (d) devices that apply a mixture of steam and ozone to the skin;
 - (e) devices that spray water and other liquids on the skin; and
 - (f) any other mechanical devices, esthetic preparations or procedures approved by the Division in collaboration with the Board for the care and treatment of the skin;
- (24) elective topics;
- (25) for schools teaching lymphatic massage, in accordance with Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(d)(i)(C), 200 hours of instruction is required and shall consist of:

- (a) 40 hours of training in anatomy and physiology of the lymphatic system;
- (b) 70 applications of one hour each in manual lymphatic massage of the full body; and
- (c) 90 hours of training in lymphatic massage by other means, including but not limited to energy, mechanical devices, suction assisted massage with or without rollers, compression therapy with equipment, or garment therapy; and
- (26) Utah Master Esthetician Examination review.

R156-11a-704. Curriculum for Nail Technology Schools.

In accordance with Subsection 58-11a-302(16)(c)(iv), the curriculum for a nail technology school shall consist of 300 hours of instruction in the following subject areas:

- (1) introduction consisting of:
 - (a) history of nail technology; and
 - (b) an overview of the curriculum;
- (2) personal, client and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the nail technician;
- (3) business and salon management including:
 - (a) developing clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) human immune system;
- (6) diseases and disorders of the nails and skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;

- (d) decontamination; and
- (e) infection control;
- (7) implements, tools and equipment for nail technology;
- (8) first aid;
- (9) anatomy;
- (10) science for nail technology;
- (11) theory of basic manicuring including hand and arm massage;
- (12) physiology of the skin and nails;
- (13) chemistry for nail technology;
- (14) artificial nail techniques consisting of:
 - (a) wraps;
 - (b) nail tips;
 - (c) gel nails;
 - (d) sculptured and other acrylic nails; and
 - (e) nail art;
- (15) pedicures and massaging the lower leg and foot;
- (16) elective topics; and
- (17) Utah Nail Technology Examination review.

R156-11a-705. Curriculum for Cosmetology/Barber Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 1,600 hours of instruction in all of the following subject areas:

- (1) introduction consisting of:
 - (a) history of barbering, cosmetology/barbering, esthetics, nail technology; and
 - (b) overview of the curriculum;
- (2) personal, client and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;
 - (c) health risks to the cosmetologist/barber;
- (3) business and salon management including:
 - (a) developing clientele;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) public relations; and
 - (f) advertising;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) human immune system;
- (6) diseases and disorders of skin, nails, hair, and scalp including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) decontamination; and
 - (e) infection control;
- (7) implements, tools and equipment for cosmetology, barbering, basic esthetics and nail technology, including:
 - (a) high frequency or galvanic current; and
 - (b) heat lamps;
 - (8) first aid;
 - (9) anatomy;
 - (10) science of cosmetology/barbering, basic esthetics and nail technology;
 - (11) analysis of the skin, hair and scalp;
 - (12) physiology of the human body including skin and nails;
 - (13) electricity and light therapy;
 - (14) limited chemical exfoliation including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) chemical reactions;
 - (15) chemistry for cosmetology/barbering, basic esthetics

- and nail technology;
- (16) temporary removal of superfluous hair including by waxing;
- (17) properties of the hair, skin and scalp;
- (18) basic hairstyling including:
 - (a) wet and thermal styling;
 - (b) permanent waving;
 - (c) hair coloring;
 - (d) chemical hair relaxing; and
 - (e) thermal hair straightening;
- (19) haircuts including:
 - (a) draping;
 - (b) clipper variations;
 - (c) scissor cutting;
 - (d) shaving; and
 - (e) wigs and artificial hair;
- (20) razor cutting for men;
- (21) mustache and beard design;
- (22) basic esthetics including:
 - (a) treatment of the skin, manual and mechanical;
 - (b) packs and masks;
 - (c) aroma therapy;
 - (d) chemistry of cosmetics;
 - (e) application of makeup including:
 - (i) application of artificial eyelashes;
 - (ii) arching of the eyebrows;
 - (iii) tinting of the eyelashes and eyebrows;
 - (f) massage of the face and neck; and
 - (g) natural manicures and pedicures;
- (23) medical devices;
- (24) cardio pulmonary resuscitation (CPR);
- (25) artificial nail techniques consisting of:
 - (a) wraps;
 - (b) nail tips;
 - (c) gel nails;
 - (d) sculptured and other acrylic nails; and
 - (e) nail art;
- (26) pedicures and massaging of the lower leg and foot;
- (27) elective topics; and
- (28) Utah Cosmetology/Barber Examination review.

R156-11a-706. Curriculum for Instructor Schools.

In accordance with Subsections 58-11a-302(2)(e)(i), (5)(e)(i), (8)(e)(i), (12)(e)(i) and (15)(e)(i), the curriculum for an approved instructor school shall consist of instructor training in the following subjects:

- (1) motivation and the learning process;
- (2) teacher preparation;
- (3) teaching methods;
- (4) classroom management;
- (5) testing;
- (6) instructional evaluation;
- (7) laws, rules and regulations; and
- (8) Utah Barber, Cosmetology/Barber, Esthetics (Master level), Electrology and Nail Technology Instructors Examination review.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved barber apprenticeship shall include the following:

- (1) The instructor shall have only one apprentice at a time.
- (2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".
- (3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total

number of hours of training. The record shall be available to the Division upon request.

(4) A complete set of barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1,250 hours using the curriculum defined in Section R156-11a-700.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(9) Any hours obtained while enrolled in a barber school or a cosmetology/barber school shall not be used to satisfy the required 1,250 hours of apprentice training.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetology/barber apprenticeship include:

(1) The instructor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

(4) A complete set of cosmetology/barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(9) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

R156-11a-802. Approved Basic Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(9) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 800 hours of apprentice training.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(9) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 1,500 hours of apprentice training.

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include:

(1) The instructor shall have no more than two apprentices at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(4) A complete set of nail technician texts shall be available to the apprentice.

(5) An apprentice may be compensated for services

performed.

(6) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(9) Hours obtained while enrolled in a nail technology school or a cosmetology/barber school shall not be used to satisfy the required 375 hours of apprentice training.

Notice of Continuation February 6, 2012

58-1-106(1)(a)
58-1-202(1)(a)

R156-11a-805. Conflicts of Interest.

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

R156-11a-901. Standards for an On the Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern shall have completed at least 1,000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one on the job training intern at a time.

(4) An on the job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

- (a) draping;
- (b) shampooing;
- (c) roller setting;
- (d) blow drying styling;
- (e) applying color;
- (f) removing color by rinsing and shampooing;
- (g) removing permanent chemicals;
- (h) removing permanent rods;
- (i) removing rollers;
- (j) applying temporary rinses, reconditioners, and rebuilders;
- (k) acting as receptionists;
- (l) doing retail sales;
- (m) sanitizing the salon;
- (o) doing inventory and ordering supplies; and
- (p) handing equipment to the cosmetologist/barber supervisor.

(5) The "on-site" cosmetologist/barber supervisor shall have in the supervisor's possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(6) Hours of training spent while performing on the job training as an intern shall not apply towards credits required for graduation.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians
August 8, 2013

58-11a-101

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(22), 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 shall 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 (14), 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 shall 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 36-NF 31), 2013 edition, which is official from May 1, 2013 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)(b), 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(7), 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 shall complete an approved program of education and training that meets the following standards:

(a) The didactic training program shall be approved by the Division in collaboration with the Board and shall 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 shall include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval shall 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)(i) An individual shall complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-303(b)(4) within two years from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

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

(A) is no longer eligible for employment as a technician-in-training and shall work in the pharmacy only as supportive personnel; and

(B) shall repeat an approved pharmacy technician training program in its entirety if the individual pursues licensure as a pharmacy technician.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualifications for licensure in Subsection 58-17b-305(1)(f) and 58-17b-305(1)(g) 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. Licensure - Pharmacist - Pharmacy Internship Standards.

(1) In accordance with Subsection 58-17b-303(1)(g), the standards for the pharmacy internship required for licensure as a pharmacist for graduates of all U.S. and foreign pharmacy schools, include the following:

(a) At least 1740 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 according to the Accreditation Council for Pharmacy Education (ACPE), Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree Guidelines Version 2.0 Effective February 14, 2001, which is hereby incorporated by reference.

(i) Introductory pharmacy practice experiences (IPPE) shall account for not less than 300 hours over the first three professional years.

(ii) A minimum of 150 hours shall be balanced between community pharmacy and institutional health system settings.

(iii) Advanced pharmacy practice experiences (APPE) shall include at least 1440 hours (i.e., 36 weeks) during the last academic year and after all IPPE requirements are completed.

(iv) Required experiences shall:

(A) include primary, acute, chronic, and preventive care among patients of all ages; and

(B) develop pharmacist-delivered patient care competencies in the community pharmacy, hospital or health-system pharmacy, ambulatory care, inpatient/acute care, and general medicine settings.

(v) 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 shall 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 shall 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 shall 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 shall 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, Injectable Weight Loss, or Cancer Drug Treatment Regimen 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) A cancer drug treatment regimen that can be dispensed by a prescribing practitioner or an individual employed by the prescribing practitioner in accordance with Subsection 58-17b-309.5(1) and (2) means a prescription drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient.

(a) A prescribing practitioner who chooses to dispense prescription medications shall disclose to the patient that the cancer drug treatment regimen may be obtained from a pharmacy unaffiliated with the prescribing practitioner and offer to the patient the opportunity to consult with a pharmacist if the patient desires patient counseling.

(b) Practitioners are required to document this interaction

by keeping a signature log of all patients who have received this written information. These records are required to be kept for a period of five years and shall be readily available for inspection.

(4) A prescribing practitioner who chooses to dispense prescription medications shall meet the standards set forth in R156-17b-602 through R156-17b-605 and R156-17b-609 through R156-17b-611.

(5) In accordance with Subsections 58-17b-309(4)(c) and 58-17b-309.5(2)(b)(viii), a prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient 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.

(6) 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), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient shall keep inventory records for each drug dispensed pursuant to R156-17b-605 and a prescription dispensing medication profile for each patient receiving a drug dispensed by the prescribing practitioner or optometrist pursuant to R156-17b-609. 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, the prescribing practitioner's employee, 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 shall 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 Sections 58-17b-309 and 58-17b-309.5; 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 and 58-17b-309.5 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 (7).

(7) 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), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5, 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.

(8) In accordance with Subsection 58-17b-309(4)(c), the medication storage standards that shall be maintained by a prescribing practitioner or optometrist who dispenses a drug under Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5, 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.

(9) In accordance with Subsections 58-17b-309(5) and 58-17b-309.5(1)(b), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2), or a drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient 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.

(10) 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, the prescribing practitioner's employee 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.

(11) Standards for reporting to the Utah Controlled Substance Database shall be the same standards as set forth in the Utah Controlled Substance Database Act, Title 58, Chapter 37f, and the Utah Controlled Substance Database Act Rule, R156-37f.

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 to do so, in violation of Subsection 58-17b-501(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(9) requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(10) being in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):

initial offense: \$500 - \$1,000

subsequent offense(s): \$1,500 - \$5,000

(11) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(12) selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(13) using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):

initial offense: \$100 - \$500

subsequent offense(s): \$1,000 - \$2,500

(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(15) paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):

initial offense: \$2,500 - \$5,000

subsequent offense(s): \$5,500 - \$10,000

(16) misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices, in violation of Subsection 58-17b-502(3):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(18) accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician, in violation of Subsection 58-17b-502(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(20) violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(21) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(22) administering without appropriate training, guidelines, lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(23) disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in violation of Subsection 58-17b-502(10):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(24) engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):

initial offense: \$100 - \$500

subsequent offense(s): \$2,000 - \$10,000

(25) failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(26) preparing a prescription drug, including compounding a prescription drug, for sale to another pharmacist or pharmaceutical facility, in violation of Subsection 58-17b-502(13):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(27) preparing a prescription drug in a dosage form which

is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(14):

initial offense: \$500 - \$1,000

subsequent offense(s): \$2,500 - \$5,000

(28) violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):

initial offense: \$250 - \$500

subsequent offense(s): \$2,000 - \$10,000

(29) failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: \$250 - \$500

subsequent offense(s): \$500 - \$750

(30) failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(31) failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(32) failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):

initial offense: \$50 - \$100

subsequent offense(s): \$200 - \$300

(33) defaulting on a student loan, in violation of Subsection R156-17b-502(5):

initial offense: \$100 - \$200

subsequent offense(s): \$200 - \$500

(34) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):

initial offense: \$500 - \$1,000

subsequent offense(s): \$2,000 - \$10,000

(35) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(36) failing to return or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):

initial offense: \$100 - \$250

subsequent offense(s): \$300 - \$500

(37) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):

initial violation: \$50 - \$100

failure to comply within determined time: \$250 - \$500

subsequent violations: \$250 - \$500

failure to comply within established time: \$750 - \$1,000

(38) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(39) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(40) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):

Pharmacist initial offense: \$100 - \$250

Pharmacist subsequent offense(s): \$500 - \$2,500

Pharmacy initial offense: \$250 - \$1,000

Pharmacy subsequent offense(s): \$500 - \$5,000

(41) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):

Pharmacist initial offense: \$50 - \$100

Pharmacist subsequent offense(s): \$250 - \$500

Pharmacy initial offense: \$250 - \$500

Pharmacy subsequent offense(s): \$1,000 - \$2,000

(42) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):

Pharmacy personnel initial offense: \$500 - \$2,500

Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000

Pharmacy: \$2,000 per occurrence

(43) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):

Double the original penalty amount up to \$10,000

(44) failing to comply with the PIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):

initial offense: \$500 - \$2,000

subsequent offense(s) \$2,000 - \$10,000

(45) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):

initial offense: \$500 - \$2,500

subsequent offense: \$5,000 - \$10,000

(46) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):

initial offense: \$100 - \$500

subsequent offense: \$200 - \$1,000

(47) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):

initial offense: \$100 - \$500

subsequent offense: \$200 - \$1,000

(48) failing to provide PIC information to the Division within 30 days of a change in PIC, in violation of Subsection R156-17b-502(20):

initial offense: \$100 - \$500

subsequent offense: \$200 - \$1,000

(49) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):

initial offense: \$500 - \$2,000

subsequent offense: \$2,000 - \$10,000

(50) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):

Pharmacist initial offense: \$100 - \$300

Pharmacist subsequent offense(s): \$500 - \$1,000

Pharmacy initial offense: \$250 - \$500

Pharmacy subsequent offense(s): \$500 - \$1,250

(51) practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(52) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(53) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):

initial offense: \$500 - \$1,000

subsequent offense(s): \$1,000 - \$5,000

(54) knowingly permitting the use of a license by another

person, in violation of Subsection 58-1-501(1)(d):

initial offense: \$500 - \$1,000

subsequent offense(s): \$1,000 - \$5,000

(55) obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: \$100 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A) and 58-1-501(2)(m)(i):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(57) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B) and 58-1-501(2)(m)(ii):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(58) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(59) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(60) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(61) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(62) engaging in conduct, including the use of intoxicants, drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician, in violation of Subsection 58-1-501(2)(e):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(63) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(64) practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(65) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or

fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(66) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(67) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(68) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(69) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(70) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(71) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct, in violation of Subsection R156-1-501(1):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(72) practicing a regulated occupation or profession in, through, or with a limited liability company that has omitted the words, "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company, in violation of Subsection R156-1-501(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(73) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "L.td." in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(74) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(75) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(76) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled SubstanceS for the

Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(77) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:

initial offense: \$1,000 - \$5,000

subsequent offense(s) \$5,000 - \$10,000

(78) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance which is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(79) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(80) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(81) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action which revokes, suspends, or limits the license, in violation of R156-37-502(3):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(82) failing to maintain controls over controlled substances which would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(83) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(84) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(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(54), 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 58-17b-102(55)(b)(2);
- (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(2)(s).

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(5) 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 shall 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 shall 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 shall 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 shall 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;

(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; and

(k) 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.

(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;

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

(d) when combining two pharmacies, each pharmacy shall:

(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

(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.

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) cashing;
 - (c) billing;
 - (d) filing;
 - (e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern or pharmacy technician;
 - (f) housekeeping; and
 - (g) delivering a pre-filled prescription to a patient.
- (2) Supportive personnel shall not enter information into a patient profile or accept verbal refill information.
- (3) In accordance with Subsection 58-17b-102(66)(b), the supervision of supportive personnel is defined as follows:
 - (a) all supportive personnel shall be under the supervision of a licensed pharmacist; and
 - (b) the licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of pre-filled prescriptions as provided in Subsection (1)(g) above.
- (4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Reserved.

Reserved.

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

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

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

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

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

- (1) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:
 - (a) the name and description of the prescription drug;
 - (b) the dosage form, dose, route of administration and duration of drug therapy;
 - (c) intended use of the drug, when known, and expected action;
 - (d) special directions and precautions for preparation, administration and use by the patient;
 - (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
 - (f) techniques for self-monitoring drug therapy;
 - (g) proper storage;
 - (h) prescription refill information;
 - (i) action to be taken in the event of a missed dose;
 - (j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and
 - (k) the date after which the prescription should not be taken or used, or the beyond use date.
- (2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.
- (3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.
- (4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records shall 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 Sections 58-17b-609 and 58-17b-611, 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 shall 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) through (29), 58-17b-602(1), R156-82, and R156-1, 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 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) shall 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 shall:

(i) be procured from a facility registered with the federal Food and Drug Administration; and

(ii) not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness;

(d) a master worksheet 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 shall be used as the preparation worksheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet 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;

(e) a preparation worksheet 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;

(f) 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;

(g) 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", 17th Edition, October 31, 2012;

(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

(h) 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 Rule 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 shall 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) shall 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 shall maintain a record of

suppliers' credit memos for controlled substances and legend drugs.

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

(15) The pharmacy facility shall 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 shall extend to the hard deck, or other measures shall 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(8) 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 - Dispensing Drugs from an Emergency Department and Upon Discharge from a Rural Hospital Pharmacy.

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(46) 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 shall 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 publicly 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 shall 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 shall 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 Subsections R156-17b-102(14)(c) and R156-17b-615(13), 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 Class A or B pharmacy. Nothing within this section prevents a facility from obtaining licensure for a secondary address which operates separate and apart from any other facility upon obtaining proper licensure.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-614(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds must follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617a. Class E Pharmacy Operating Standards - General Provisions.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), Class E pharmacies shall have a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs that will be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) A Class E pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compounding for sterile preparations.

R156-17b-617b. Class E Pharmacy Operating Standards - Analytical Laboratory.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an analytical laboratory shall:

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

(2) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(3) maintain a list of drugs that will be purchased, stored, used and accounted for;

(4) maintain a list of licensed healthcare providers associated with the operation of the business;

(5) possess prescription drugs for the purpose of analysis; and

(6) take measures to prevent the theft or loss of controlled substances.

R156-17b-617c. Class E Pharmacy Operating Standards - Animal Euthanasia.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal euthanasia facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security which limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal euthanasia facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval which include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;

(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

(2) In accordance with Section 58-37-6 and Subsection R156-37-305(1), individuals employed by an agency of the State or any of its political subdivisions who are specifically authorized in writing by their employer to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the

employing agency or jurisdiction has obtained a controlled substance license and a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

R156-17b-617d. Class E Pharmacy Operating Standards- Durable Medical Equipment.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), durable medical equipment facility shall:

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

(b) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

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

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

(e) maintain prescription forms and records for a period of five years;

(f) be locked and enclosed in such a way as to bar entry by the public or any non-personnel when the facility is closed; and

(g) post the license of the facility in full view of the public.

(2) A licensed practitioner who administers durable medical equipment to a patient or animal is not engaging in the practice of pharmacy, and does not require a license as a Class E pharmacy.

R156-17b-617e. Class E Pharmacy Operating Standards - Human Clinical Investigational Drug Research Facility.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a human clinical investigational drug research facility licensed as a Class E Pharmacy shall, in addition to the requirements contained in Subsection R156-17b-617a, conduct operations in accordance with the operating standards set forth in 21 CFR Part 312, which are hereby incorporated by reference.

(2) In accordance with Subsections 58-37-6(2)(b) and (3)(a)(i), persons licensed to conduct research with controlled substances in Schedules I-V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license.

(3) In accordance with Subsection 58-37-6(2), the following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II-V:

(a) an agent or employee acting in the usual course of the person's business or employment, and

(b) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(4) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.

In accordance with Section 58-17b-302 and Subsection 58-17b 601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following proposed changes:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership.

(2) Upon approval of the change in location, name, or ownership, and the issuance of a new license, the original license shall be surrendered to the Division.

(b) Upon approval of the name change, the original licenses shall be surrendered to the Division.

R156-17b-619. Operating Standards - Third Party Payors.

Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent

situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The PIC or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address

situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

- (a) current Basic Life Support (BLS) certification; and
- (b) successful completion of a training program which includes at a minimum:
 - (i) didactic and practical training for administering injectable drugs;
 - (ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and
 - (iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

- (a) ACPE approved programs; and
- (b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

(4) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications", adopted March 27, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications.

KEY: pharmacists, licensing, pharmacies

August 8, 2013

Notice of Continuation February 23, 2010

58-17b-101

58-17b-601(1)

58-37-1

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-56. Building Inspector and Factory Built Housing Licensing Act Rule.

R156-56-101. Title.

This rule is known as the "Building Inspector and Factory Built Housing Licensing Act Rule".

R156-56-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 55 and 56, as used in Title 58, Chapter 56 or this rule:

(1) "Board" means the Building Inspector Licensing Board created in Section 58-56-8.5.

(2) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.

(3) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical construction, alteration, remodeling, repair or installation in accordance with the state construction codes adopted under Title 15A and taking appropriate action based upon the findings made during inspection.

R156-56-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 56.

R156-56-104. 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.

R156-56-201. Building Inspector Licensing Board.

In accordance with Section 58-56-8.5, the board shall be as follows:

- (1) one member licensed as a Combination Inspector;
- (2) one member licensed as an Inspector who is qualified in the electrical code;
- (3) one member licensed as an Inspector who is qualified in the plumbing code;
- (4) one member licensed as an Inspector who is qualified in the mechanical code; and
- (5) one member shall be from the general public.

R156-56-301. Reserved.

Reserved.

R156-56-302. Qualifications for Licensure of Inspectors - Application Requirements.

In accordance with Subsection 58-56-9(1), the licensee classifications, scope of work, qualifications for licensure, and application for license are established as follows:

(1) License Classifications. Each inspector required to be licensed under Subsection 58-56-9(1) shall qualify for licensure and be licensed by the Division in one of the following classifications:

- (a) Combination Inspector; or
- (b) Limited Inspector.

(2) Scope of Work. The scope of work permitted under each inspector classification is as follows:

- (a) Combination Inspector.

(i) Inspect the components of any building, structure or work for which a standard is provided in the specific edition of the state construction codes adopted under Title 15A.

- (ii) Determine whether the construction, alteration,

remodeling, repair or installation of all components of any building, structure or work is in compliance with the state construction code adopted under Title 15A.

(iii) After determination of compliance or noncompliance with the state construction codes adopted under Title 15A, take appropriate action as is provided in the aforesaid codes.

- (b) Limited Inspector.

(i) A Limited Inspector may only conduct activities under Subsections (ii), (iii) or (iv) for which the Limited Inspector has maintained current certificates under state construction codes adopted under Title 15A as provided under Subsection R156-56-302(3)(b).

(ii) Subject to the limitations of Subsection (i), inspect the components of any building, structure or work for which a standard is provided in the state construction codes adopted under Title 15A.

(iii) Subject to the limitations under Subsection (i), determine whether the construction, alteration, remodeling, repair or installation of components of any building, structure or work is in compliance with the state construction codes adopted under Title 15A.

(iv) Subject to the limitations under Subsection (i), after determination of compliance or noncompliance with the state construction codes adopted under Title 15A, take appropriate action as is provided in the adopted codes.

(3) Qualifications for Licensure. The qualifications for licensure for each inspector classification are as follows:

- (a) Combination Inspector.

Has passed the examination for and maintained as current the following national certifications for state construction codes adopted under Title 15A:

(i) the "Combination Inspector Certification" issued by the International Code Council; or

- (ii) all of the following certifications:

(A) the "Building Inspector Certification" issued by the International Code Council or both the "Commercial Building Inspector Certification" and the "Residential Building Inspector Certification" issued by the International Code Council;

(B) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors, or both the "Commercial Electrical Inspector Certification" and the "Residential Electrical Inspector Certification" issued by the International Code Council;

(C) the "Plumbing Inspector Certification" issued by the International Code Council, or both the "Commercial Plumbing Inspector Certification" and the "Residential Plumbing Inspector Certification" issued by the International Code Council; and

(D) the "Mechanical Inspector Certification" issued by the International Code Council or both the "Commercial Mechanical Inspector Certification" and the "Residential Mechanical Inspector Certification" issued by the International Code Council.

- (b) Limited Inspector.

Has passed the examination for and maintained as current one or more of the following national certifications for state construction codes adopted under Title 15A:

(i) the "Building Inspector Certification" issued by the International Code Council;

(ii) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Code Council;

(iv) the "Mechanical Inspector Certification" issued by the International Code Council;

(v) the "Residential Combination Inspector Certification" issued by the International Code Council;

(vi) the "Commercial Combination Certification" issued by the International Code Council;

(vii) the "Commercial Building Inspector Certification" issued by the International Code Council;

(viii) the "Commercial Electrical Inspector Certification" issued by the International Code Council;

(ix) the "Commercial Plumbing Inspector Certification" issued by the International Code Council;

(x) the "Commercial Mechanical Inspector Certification" issued by the International Code Council;

(xi) the "Residential Building Inspector Certification" issued by the International Code Council;

(xii) the "Residential Electrical Inspector Certification" issued by the International Code Council;

(xiii) the "Residential Plumbing Inspector Certification" issued by the International Code Council;

(xiv) the "Residential Mechanical Inspector Certification" issued by the International Code Council;

(xv) any other special or otherwise limited inspector certifications used by the International Code Council which certifications cover a part of the state construction codes adopted under Title 15A, including but not limited to each of the following: Reinforced Concrete Special Inspector, Prestressed Concrete Special Inspector, Structural Masonry Special Inspector, Structural Steel and Bolting Special Inspection, Structural Welding Special Inspection, Spray Applied Fire Proofing Special Inspector, Residential Energy Inspector, Commercial Energy Inspector;

(xvi) the Certified Welding Inspector Certification issued by the American Welding Society;

(xvii) any other certification issued by an agency specified in Chapter 17 of the International Building Code ("IBC") or an agency specified in the referenced standards; or

(xviii) any combination certification which is based upon a combination of one or more of the above listed certifications.

(c) If no qualification is listed in the IBC for a special inspector, the special inspector may submit his qualifications to the licensing board for approval.

(4) Application for License.

(a) An applicant for licensure shall:

(i) submit an application in a form prescribed by the Division; and

(ii) pay a fee determined by the department pursuant to Section 63J-1-504.

(5) Code Transition Provisions.

(a) If an inspector or applicant obtains a new, renewal or recertification or replacement national certificate after a new code or code edition is adopted, the inspector or applicant is required to obtain that certification under the currently adopted code or code edition.

(b) After a new code or new code edition is adopted under this rule, the inspector is required to re-certify the inspector's national certification to the new code or code edition at the next available renewal cycle of the national certification.

(c) If a licensed inspector fails to obtain the national certification as required in Subsection (a) or (b), the inspector's authority to inspect for the area covered by the national certification automatically expires at the expiration date of the national certification that was not obtained as required.

(d) If an inspector recertifies a national certificate on a newer edition of the codes adopted before that newer edition is adopted under this rule, such recertification shall be considered as a current national certification as required by this rule.

(e) If an inspector complies with these transition provisions, the inspector shall be considered to have a current national certification as required by this rule.

R156-56-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year cycle applicable to licenses under Title 58, Chapter 56 is established by rule in Section R156-1-308a.

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

R156-56-401. Factory Built Housing and Modular Unit Contractor Continuing Education.

In accordance with Subsection 15A-1-306(1)(f)(ii), continuing education required for factory built housing installation contractors and modular construction installation contractors is as stated in Subsection 58-55-303(2)(b).

R156-56-402. Factory Built Housing Dealer Bonds.

(1) In accordance with Subsection 58-56-16(2)(c), a factory built housing dealer shall provide a registration bond issued by a surety acceptable to the Division in the amount of \$50,000. An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, current revision, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

(2) The coverage of the registration bond shall include losses that may occur as the result of the factory built housing dealer's violation of the unprofessional or unlawful conduct provisions contained in Title 58, Chapters 1 and 56.

R156-56-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-56-9.1, 58-56-9.3, and 58-56-9.5, unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

(1) Engaging in the sale of factory built housing without being registered.

First offense: \$500

Second offense: \$1,000

(2) Selling factory built housing within the state as a dealer without collecting and remitting to the Division the fee required by Section 58-56-17.

First offense: \$500

Second offense: \$1,000

(3) Acting as a building inspector or representing oneself to be acting as a building inspector, unless licensed or exempted from licensure under Title 58, Chapter 56 or using the title building inspector or any other description, words, letters, or abbreviation indicating that the person is a building inspector if the person has not been licensed under Title 58, Chapter 56.

First offense: \$500

Second offense: \$1,000

(4) Acting as a building inspector beyond the scope of the license held.

First offense: \$500

Second offense: \$1,000

(5) Hiring or employing in any manner an unlicensed person as a building inspector, unless exempted from licensure.

First offense: \$800

Second offense: \$1,600

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Section 58-56-9.5.

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the

**R156. Commerce, Occupational and Professional Licensing.
R156-69. Dentist and Dental Hygienist Practice Act Rule.
R156-69-101. Title.**

This rule is known as the "Dentist and Dental Hygienist Practice Act Rule."

R156-69-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 69, as used in Title 58, Chapters 1 and 69 or this rule:

- (1) "ACLS" means Advanced Cardiac Life Support.
- (2) "ADA" means the American Dental Association.
- (3) "ADA CERP" means American Dental Association Continuing Education Recognition Program.
- (4) "Advertising or otherwise holding oneself out to the public as a dentist" means representing or promoting oneself as a dentist through any of the following or similar methods:
 - (a) business names;
 - (b) business signs;
 - (c) door or window lettering;
 - (d) business cards;
 - (e) letterhead;
 - (f) business announcements;
 - (g) flyers;
 - (h) mailers;
 - (i) promotions;
 - (j) advertisements;
 - (k) radio or television commercials;
 - (l) listings in printed or online telephone directories; or
 - (m) any other type of advertisement or promotional communication.
- (5) "BCLS" means Basic Cardiac Life Support.
- (6) "ADHA" means the American Dental Hygienists' Association.
- (7) "CPR" means cardiopulmonary resuscitation.
- (8) "CRDTS" means the Central Regional Dental Testing Service, Inc.
- (9) "Competency" means displaying special skill or knowledge derived from training and experience.
- (10) "Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.
- (11) "DANB" means the Dental Assisting National Board, Inc.
- (12) "Deep sedation" means a controlled state of depressed consciousness, accompanied by partial loss of protective reflexes, including inability to respond purposefully to verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.
- (13) "General anesthesia" means a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method or a combination thereof.
- (14) "NERB" means Northeast Regional Board of Dental Examiners, Inc.
- (15) "PALS" means Pediatric Advanced Life Support.
- (16) "Practice of dentistry" in regard to administering anesthesia is further defined as follows:
 - (a) a Class I permit allows for local anesthesia which is the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug;
 - (b) a Class II permit allows for minimal sedation which is a minimally depressed level of consciousness induced by nitrous oxide, or by a pharmacological method, or by both, that retains the patient's ability to independently and consciously

maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected;

(c) a Class III permit allows for moderate sedation in which a drug induced depression of consciousness occurs during which a patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patient's airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(d) a Class IV permit allows for deep sedation in which a drug induced depression of consciousness occurs from which a patient cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. A patient may require assistance in maintaining an airway and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(17) "Prominent disclaimer" means a disclaimer as described in and as required by Subsection R156-69-502(2)(ii) that:

(a) if in writing, is in the same size of lettering as the largest lettering otherwise contained in an advertisement, publication, or other communication in which the disclaimer appears; or

(b) if not in writing, is in the same volume and speed as the slowest speed and highest volume otherwise included in a radio or television commercial or other oral advertisement or promotion in which the disclaimer appears.

(18) "Specialty area" means an area of dentistry proposed in a formal application by a sponsoring organization to the Council on Dental Education and Licensure and formally approved by the ADA as meeting the "Requirements for Recognition of Dental Specialists". Specialty areas include the following:

- (a) orthodontics;
 - (b) oral and maxillofacial surgery;
 - (c) oral and maxillofacial pathology;
 - (d) pediatric dentistry;
 - (e) periodontics;
 - (f) endodontics;
 - (g) prosthodontics;
 - (h) dental public health; and
 - (i) oral and maxillofacial radiology.
- (19) "SRTA" means Southern Regional Testing Agency, Inc.

(20) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 69, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-69-502.

- (21) "UDA" means Utah Dental Association.
- (22) "UDHA" means Utah Dental Hygienists' Association.
- (23) "WREB" means the Western Regional Examining Board.

R156-69-103. 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 69.

R156-69-104. 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.

R156-69-201. Classifications of Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(a), a dentist may be issued an anesthesia and analgesia permit in the following classifications:

- (1) class I permit;
- (2) class II permit;
- (3) class III permit; and
- (4) class IV permit.

R156-69-202. Qualifications for Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for anesthesia and analgesia permits are:

- (1) for a class I permit:
 - (a) current licensure as a dentist in Utah; and
 - (b) documentation of current CPR or BCLS certification;
- (2) for a class II permit:
 - (a) current licensure as a dentist in Utah;
 - (b) documentation of current BCLS certification;
 - (c) evidence of having successfully completed training in the administration of nitrous oxide and pharmacological methods of conscious sedation which conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, which is incorporated by reference; and
 - (d) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(2);
- (3) for a class III permit:
 - (a) compliance with Subsections (1)(a) and (2) above;
 - (b) evidence of current Advanced Cardiac Life Support (ACLS) certification;
 - (c) evidence of holding a current Utah controlled substance license in good standing and a current Drug Enforcement Administration (DEA) Registration in good standing;
 - (d) evidence of having successfully completed comprehensive predoctoral or post doctoral training in the administration of conscious sedation which conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, and a letter from the course director documenting competency in performing conscious sedation; and 60 hours of didactic education in sedation and successful completion of 20 cases; and
 - (e) certification that the applicant will comply the scope of practice as set forth in Subsection R156-69-601(3); and
- (4) for a class IV permit:
 - (a) compliance with Subsections (1), (2), and (3) above;
 - (b) evidence of current ACLS certification;
 - (c) evidence of having successfully completed advanced training in the administration of general anesthesia and deep sedation consisting of not less than one year in a program which conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, and a letter from the course director documenting competency in performing general anesthesia and deep sedation;
 - (d) documentation of successful completion of advanced training in obtaining a health history, performing a physical examination and diagnosis of a patient consistent with the administration of general anesthesia or deep sedation; and
 - (e) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(4).

R156-69-203. Classification of Anesthesia and Analgesia Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(a), a dental hygienist may be issued an anesthesia and analgesia permit in the classification of local anesthesia.

R156-69-204. Qualifications for Anesthesia and Analgesia Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for a local anesthesia permit are the following:

- (1) current Utah licensure as a dental hygienist or documentation of meeting all requirements for licensure as a dental hygienist;
- (2) successful completion of a program of training in the administration of local anesthetics accredited by the Commission on Dental Accreditation of the ADA;
- (3)(a) a passing score on the WREB examination in anesthesiology; or
- (b) documentation of having a current, active license to administer local anesthesia in another state in the United States; and
- (4) documentation of current CPR or BCLS certification.

R156-69-302b. Qualifications for Licensure - Examination Requirements - Dentist.

In accordance with Subsections 58-69-302(1)(f) and (g), the examination requirements for licensure as a dentist include the periodontics section and are established as the following:

- (1) the WREB examination with a passing score as established by the WREB;
- (2) the NERB examination with a passing score as established by the NERB;
- (3) the SRTA examination with a passing score as established by the SRTA; or
- (4) the CRDTS examination with a passing score as established by the CRDTS.

R156-69-302c. Qualifications for Licensure - Examination Requirements - Dental Hygienist.

In accordance with Subsections 58-69-302(3)(f) and (g), the examination requirements for licensure as a dental hygienist are established as the following:

- (1) the WREB examination with a passing score as established by the WREB;
- (2) the NERB examination with a passing score as established by the NERB;
- (3) the SRTA examination with a passing score as established by the SRTA; or
- (4) the CRDTS examination with a passing score as established by the CRDTS.

R156-69-302d. Licensure of Dentist-Educators.

In accordance with Subsection 58-69-302.5(2)(a)(i), submission of information maintained in a practitioner data bank means submission to the National Practitioner Data Bank (NPDB).

R156-69-303. Renewal Cycle - Procedures.

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 69, is established by rule in Section R156-1-308a.
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-69-304a. Continuing Education - Dentist and Dental Hygienist.

In accordance with Section 58-69-304, qualified continuing professional education requirements are established as the following:

- (1) All licensed dentists and dental hygienists shall complete 30 hours of qualified continuing professional education during each two year period of licensure.
- (2) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.
- (3) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;
 (b) be prepared and presented by individuals who are qualified by education, training and experience to provide dental and dental hygiene continuing education; and

(c) have a method of verification of attendance and completion.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by or under sponsorship of:

(i) the Division of Occupational and Professional Licensing;

(ii) recognized universities and colleges;

(iii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of dentistry and dental hygiene; or

(iv) ADA or any subgroup thereof, the ADHA or any subgroup thereof, an accredited dental, dental hygiene or dental postgraduate program, a government agency, a recognized health care professional association or a peer study club;

(b) a maximum of ten hours per two year period may be recognized for teaching continuing education relevant to dentistry and dental hygiene;

(c) a maximum of 15 hours per two year period may be recognized for continuing education that is provided via Internet or through home study which provides an examination and a completion certificate;

(d) a maximum of six hours per two year period may be recognized for continuing education provided by the Division of Occupational and Professional Licensing; and

(e) qualified continuing professional education may include up to three hours in practice and office management.

(5) If properly documented that a licensee is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

(6) Hours for recertification in CPR, BCLS, ACLS and PALS do not count as continuing education.

(7) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. 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.

R156-69-502. Unprofessional Conduct.

"Unprofessional Conduct" includes the following:

(1) failing to provide continuous in-operatory observation by a trained dental patient care staff member for any patient under nitrous oxide administration;

(2) advertising or otherwise holding oneself out to the public as a dentist or dental group that practices in a specialty area unless:

(i) each dentist has successfully completed an advanced educational program accredited by the ADA's Commission on Dental Accreditation (or its equivalent if completed prior to 1967) of two or more years in length, as specified by the Council on Dental Education and Licensure;

(ii) as specified in Subsection 58-69-502(2)(b), the advertisement or other method of holding oneself out to the public as a dentist or dental group includes a prominent

disclaimer that the dentist or dentists performing services are licensed as general dentists or that the specialty services will be provided by a general dentist;

(iii) the advertisement or other method of holding oneself out to the public as a dentist or dental group that practices in a specialty area includes a prominent disclaimer that the dentist or dentists performing services is a specialist, but not qualified as a specialist in the specialty area being advertised; or

(iv) otherwise advertising in a specialty area by representing that a dentist has attained any education, training or certification in the specialty area when the dentist has not met the criteria;

(3) advertising in any form that is misleading, deceptive, or false; including the display of any credential, education, or training that is inaccurate, or the making of any unsubstantiated claim of superiority in training, skill, experience, or any other quantifiable aspect;

(4) prescribing treatments and medications outside the scope of dentistry;

(5) prescribing for oneself any Schedule II or III controlled substance;

(6) engaging in practice as a dentist or dental hygienist without prominently displaying a copy of the current Utah license;

(7) failing to personally maintain current CPR or BCLS certification, or employing patient care staff who fail to maintain current CPR or BCLS certification;

(8) providing consulting or other dental services under anonymity;

(9) engaging in unethical or illegal billing practices or fraud, including:

(a) reporting an incorrect treatment date for the purpose of obtaining payment;

(b) reporting charges for services not rendered;

(c) incorrectly reporting services rendered for the purpose of obtaining payment;

(d) generally representing a charge to a third party that is different from that charged to the patient;

(10) failing to establish and maintain appropriate dental records;

(11) failing to maintain patient records for a period of seven years;

(12) failing to provide copies of x-rays, reports or records to a patient or the patient's designee upon written request and payment of a nominal fee for copies regardless of the payment status of the services reflected in the record; and

(13) failing to submit a complete report to the Division within 30 calendar days concerning an incident, in which any anesthetic or sedative drug was administered to any patient, which resulted in, either directly or indirectly, the death or adverse event resulting in patient admission to a hospital.

R156-69-601. Scope of Practice - Anesthesia and Analgesia Permits.

In accordance with Subsection 58-69-301(4)(a), the scope of practice permitted under each classification of anesthesia and analgesia permit includes the following:

(1) A dentist with a class I permit:

(a) may administer or supervise the administration of any legal form of non-drug induced conscious sedation or drug induced conscious sedation except:

(i) the administration of inhalation agents including nitrous oxide; and

(ii) the administration of any drug for sedation by any parenteral route; and

(b) shall maintain and ensure that all patient care staff maintain current CPR certification.

(2) A dentist with a class II permit:

(a) may administer or supervise the administration of

nitrous oxide induced conscious sedation in addition to the privileges granted to one holding a Class I permit; and

(b) shall ensure that:

(i) every patient under nitrous oxide administration is under continuous in-operative observation by a member of the dental patient care staff;

(ii) nitrous oxide and oxygen flow rates and sedation duration and clearing times are appropriately documented in patient records;

(iii) reasonable and prudent controls are in place and followed in regard to nitrous oxide to ensure the health and safety of patients, dental office personnel, and the general public;

(iv) the dental facility is equipped with adequate and appropriate equipment, in good working order, to assess vital signs; and

(v) equipment used in the administration of nitrous oxide has a scavenging system and that all gas delivery units have an oxygen fail-safe system.

(3) A dentist with a class III permit:

(a) may administer or supervise the administration of parenteral conscious sedation in addition to the privileges granted one holding a Class I and Class II permit; and

(b) shall ensure that:

(i) the dental facility has adequate and appropriate monitoring equipment, including pulse oximetry, current emergency drugs, and equipment capable of delivering oxygen under positive pressure;

(ii) the patient's heart rate, blood pressure, respirations and responsiveness are checked at specific intervals during the anesthesia and recovery period and that these observations are appropriately recorded in the patient record;

(iii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, and resuscitation medications;

(iv) the above equipment is inspected annually by a certified technician and is calibrated and in good working order;

(v) inhalation agents' flow rates and sedation duration and clearing times are appropriately documented in patient records; and

(vi) a minimum of two persons, with one person constantly monitoring the patient, are present during the administration of parenteral conscious sedation as follows:

(A) an operating permittee dentist and a BCLS certified assistant trained and qualified to monitor appropriate and required physiologic parameters;

(B) an operating dentist and a permittee dentist; or

(C) an operating permittee dentist and another licensed professional qualified to administer this class of anesthesia.

(4) A dentist with a class IV permit;

(a) may administer or supervise the administration of general anesthesia or deep sedation in addition to the privileges granted one holding a class I, II and III permit; and

(b) shall ensure that:

(i) the dental facility is equipped with precordial stethoscope for continuous monitoring of cardiac function and respiratory work, electrocardiographic monitoring and pulse oximetry, means of monitoring blood pressure, and temperature monitoring; the preceding or equivalent monitoring of the patient will be used for all patients during all general anesthesia or deep sedation procedures; in addition, temperature monitoring will be used for children;

(ii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, resuscitation medications, and defibrillator;

(iii) the above equipment is inspected annually by a certified technician and is calibrated and in good working order; and

(iv) three qualified and appropriately trained individuals

are present during the administration of general anesthesia or deep sedation as follows:

(A) an operating dentist holding a permit under this classification, an anesthesia assistant trained to observe and monitor the patient using the equipment required above, and an individual to assist the operating dentist;

(B) an operating dentist, an assistant to the dentist and a dentist holding a permit under this classification; or

(C) another licensed professional qualified to administer this class of anesthesia and an individual to assist the operating dentist.

(5) Any dentist administering any anesthesia to a patient which results in, either directly or indirectly, the death or adverse event resulting in hospitalization of a patient shall submit a complete report of the incident to the Board within 30 days.

R156-69-602. Practice of Dental Hygiene.

In accordance with Subsection 58-69-102(7)(a)(ix), other practices of dental hygiene include performing laser bleaching and laser periodontal debridement.

R156-69-603. Use of Unlicensed Individuals as Dental Assistants.

In accordance with Section 58-69-803, the standards regulating the use of unlicensed individuals as dental assistants are that an unlicensed individual shall not, under any circumstance:

(1) render definitive treatment diagnosis;

(2) place, condense, carve, finish or polish restorative materials, or perform final cementation;

(3) cut hard or soft tissue or extract teeth;

(4) remove stains, deposits, or accretions, except as is incidental to polishing teeth coronally with a rubber cup;

(5) initially introduce nitrous oxide and oxygen to a patient for the purpose of establishing and recording a safe plane of analgesia for the patient, except under the direct supervision of a licensed dentist;

(6) remove bonded materials from the teeth with a rotary dental instrument or use any rotary dental instrument within the oral cavity except to polish teeth coronally with a rubber cup;

(7) take jaw registrations or oral impressions for supplying artificial teeth as substitutes for natural teeth, except for diagnostic or opposing models for the fabrication of temporary or provisional restorations or appliances;

(8) correct or attempt to correct the malposition or malocclusion of teeth, or make an adjustment that will result in the movement of teeth upon an appliance which is worn in the mouth;

(9) perform sub-gingival instrumentation;

(10) render decisions concerning the use of drugs, their dosage or prescription;

(11) expose radiographs without meeting the following criteria:

(a) completing a dental assisting course accredited by the ADA Commission on Dental Accreditation; or

(b) passing one of the following examinations:

(i) the DANB Radiation Health and Safety Examination (RHS); or

(ii) a radiology exam approved by the Board that meets the criteria established in Section R156-69-604; or

(12) work without a current CPR or BCLS certification.

R156-69-604. Radiology Course for Unlicensed Individuals as Dental Assistants.

In accordance with Section 58-69-803 and Subsection 58-54-4.3(2), the radiology course in Subsection R156-69-603(11) shall include radiology theory consisting of:

(1) orientation to radiation technology;

- (2) terminology;
- (3) radiographic dental anatomy and pathology (cursory);
- (4) radiation physics (basic);
- (5) radiation protection to patient and operator;
- (6) radiation biology including interaction of ionizing radiation on cells, tissues and matter;
- (7) factors influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-radiation;
- (8) intraoral and extraoral radiographic techniques;
- (9) processing techniques including proper disposal of chemicals; and
- (10) infection control in dental radiology.

KEY: licensing, dentists, dental hygienists**August 8, 2013****Notice of Continuation March 10, 2011****58-69-101****58-1-106(1)(a)****58-1-202(1)(a)**

R156. Commerce, Occupational and Professional Licensing.
R156-70a. Physician Assistant Practice Act Rule.
R156-70a-101. Title.

This rule is known as the "Physician Assistant Practice Act Rule".

R156-70a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 70a, as used in this rule:

(1) "Full time equivalent" or "FTE" means the equivalent of 2,080 hours of staff time for a one-year period.

(2) "Locum tenens" means a medical practice situation in which one physician assistant acts as a temporary substitute for the physician assistant who regularly will or does practice in that particular setting.

(3) "On-site supervision", as used in Section R156-70a-501, means the physician assistant will be working in the same location as the supervising physician.

R156-70a-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 70a.

R156-70a-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.

R156-70a-302. Qualification for Licensure - Examination Requirements.

In accordance with Subsection 58-70a-302(5), the examinations which must be successfully passed by applicants for licensure as a physician assistant are:

(1) the National Commission on Certification of Physician Assistants (NCCPA); and

(2) the Utah Physicians Assistant Law and Rules Examination.

R156-70a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 70a is established by rule in Section R156-1-308a.

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

R156-70a-304. Continuing Education.

In accordance with Subsection 58-70a-304(1)(a), the requirements for qualified continuing professional education (CPE) are as follows:

(1) CPE shall consist of 40 hours in each preceding two year licensure cycle. A licensee may submit documentation to the Division of current national certification by NCCPA; such certification shall be deemed to meet the requirements in this section.

(2) A minimum of 34 hours shall be in category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME).

(3) Approved providers for ACCME offerings include the following:

(a) approved programs sponsored by the American Academy of Physician Assistants (AAPA); or

(b) programs approved by other health-related continuing education approval organizations, provided the continuing education is nationally recognized by a healthcare accredited agency and the education is related to the practice as a physician assistant.

(4) A maximum of six hours may be recognized for non-ACCME offerings of continuing education provided by the

Division of Occupational and Professional Licensing.

(5) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion.

(6) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (5) above).

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

(8) Continuing professional education for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.

R156-70a-305. Exemptions from Licensure.

"Temporary basis", as used in Subsection 58-70a-305(1)(b)(ii), shall be limited as defined by the Delegation of Service Agreement and shall include the following:

(1) the circumstances and purpose under which any temporary supervision is permitted;

(2) the temporary supervision duties to be performed by the physician assistant;

(3) the amount of temporary supervision that is allowed; and

(4) how the physician will review the activities of students while under temporary supervision.

R156-70a-501. Working Relationship and Delegation of Duties.

In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and welfare will not be adversely compromised. The degree of on-site supervision shall be outlined in the Delegation of Services Agreement maintained at the site of practice. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature.

(2) There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.

(3) The supervising physician shall review and co-sign sufficient numbers of patient charts and medical records to ensure that the patient's health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for review that are appropriate for the working relationship.

(4) A supervising physician may not supervise more than four full time equivalent (FTE) physician assistants without the prior approval of the division in collaboration with the board, and only for extenuating circumstances with a written request with justification. The supervising physician shall ensure that patient health, safety, and welfare is not adversely compromised by supervising more physician assistants than the physician can

competently supervise.

KEY: licensing, physician assistants

August 8, 2013

Notice of Continuation December 19, 2011

58-70a-101

58-1-106(1)(a)

58-1-202(1)(a)

R162. Commerce, Real Estate.**R162-2c. Utah Residential Mortgage Practices and Licensing Rules.****R162-2c-101. Title.**

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) The acronym "BLM" stands for branch lending manager.

(3) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses for Utah-specific prelicensing education or continuing education; or

(b) function as an instructor for courses approved for Utah-specific prelicensing education or continuing education.

(4) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

(5) "Control person" is defined in Section 61-2c-102(1)(p).

(6) "Expired license" means a license that is not renewed according to applicable deadlines, but is eligible to be reinstated.

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator or lending manager.

(8) "Incentive program" means a program through which a licensed entity may, pursuant to Subsection R162-2c-301b, pay a licensed mortgage loan originator who is sponsored by the entity for bringing business into the entity.

(9) "Instruction method" means the forum through which the instructor and student interact and may be:

(a) classroom: traditional instruction where instructors and students are located in the same physical location;

(b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or

(c) online: instructor and student interact through an online classroom.

(10) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

(11)(a) "Lending manager" is defined in Section 61-2c-102(1)(aa).

(b) "Lending manager license" includes:

(i) a principal lending manager license;

(ii) an associate lending manager license; and

(iii) a branch lending manager license.

(12) The acronym "LM" stands for lending manager and includes the following licensing designations:

(a) principal lending manager;

(b) associate lending manager; and

(c) branch lending manager.

(13) "Mortgage entity" means any entity that:

(a) engages in the business of residential mortgage lending;

(b) is required to be licensed under Section 61-2c-201; and

(c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.

(14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.

(15) The acronym "NMLS" stands for Nationwide Mortgage Licensing System.

(16) "Other trade name" means any assumed business name under which an entity does business.

(17) "Personal information" means a person's first name or first initial and last name, combined with any one or more of the following data elements relating to that person when either the name or data element is unencrypted or not protected by another method that renders the data unreadable or unusable:

(a) Social Security number;

(b) financial account number, or credit or debit card number; or

(c) driver license number or state identification card number.

(18) The acronym "PLM" stands for principal lending manager.

(19) "Qualifying individual" means the LM, managing principal, or qualified person who is identified on the MUI form in the nationwide database as the person in charge of an entity.

(20) "Reapplication" or "reapply" refers to a request for licensure that is submitted after the deadline for reinstatement expires and the license has become terminated.

(21) "Reinstatement" or "reinstated" refers to a request for a licensure that is submitted after the applicable December 31 license expiration date passes and by or before February 28 of the following calendar year.

(22) As used in Subsection R162-2c-201, "relevant information" includes:

(a) court dockets;

(b) charging documents;

(c) orders;

(d) consent agreements; and

(e) any other information the division may require.

(23) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

(24) "Safeguard" means to prevent unauthorized access, use, disclosure, or dissemination.

(25) "School" means

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college;

(c) any vocational-technical school;

(d) any state or federal agency or commission;

(e) any nationally recognized mortgage organization that has been approved by the commission;

(f) any Utah mortgage organization that has been approved by the commission;

(g) any local mortgage organization that has been approved by the commission; or

(h) any proprietary mortgage education school that has been approved by the commission.

(26) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

(27) "Terminated license" means a license that was not renewed or reinstated according to applicable deadlines.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage loan originator.

(a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv) obtain a unique identifier through the nationwide database;

(v) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific pre-

licensing education as approved by the division;

(vi)(A) successfully complete 20 hours of pre-licensing education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or

(B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:

(I) approved by the nationwide database; and

(II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;

(vii) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:

(A) are approved and administered through the nationwide database; and

(B) consist of a national component and a Utah-specific state component;

(viii) request licensure as a mortgage loan originator through the nationwide database;

(ix) authorize a criminal background check and submit fingerprints through the nationwide database;

(x) authorize the nationwide database to provide the individual's credit report to the division for review;

(xi) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(xii) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(xiii) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xiv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv)(A) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific mortgage loan originator prelicensing education; and

(B) take and pass the Utah-specific state examination component;

(v) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(vi) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(vii) request licensure as a mortgage loan originator through the nationwide database;

(viii) authorize a criminal background check through the nationwide database;

(ix) authorize the nationwide database to provide the individual's credit report to the division for review;

(x) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xi) pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Lending manager. To obtain a Utah license to practice as an LM, an individual shall:

(a) evidence good moral character pursuant to R162-2c-

202(1);

(b) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(c) evidence financial responsibility pursuant to R162-2c-202(3);

(d) provide to the division:

(i) the individual's unique identifier as assigned through the nationwide database; and

(ii) evidence that the individual has taken and passed:

(A) the 20-hour national mortgage loan originator prelicensing course; and

(B) the mortgage loan originator examinations that:

(I) meet the requirements of Section 61-2c-204.1(4);

(II) are approved and administered through the nationwide database; and

(III) consist of a national component and a Utah-specific state component;

(e) obtain approval from the division to take the Utah-specific LM prelicensing education by evidencing that the applicant has satisfied, during the five-year period preceding the date of application, the experience requirement of Section 61-2c-206(1)(d) through:

(i)(A) three years full-time experience originating first-lien residential mortgages pursuant to Section 61-2c-102(1)(ee)(i)(A):

(I) under a license issued by a state regulatory agency; or

(II) as an employee of a depository institution; and

(B) evidence of having originated a minimum of 45 first-lien residential mortgages; or

(ii)(A)(I) two years full-time experience as described in this Subsection (2)(e)(i)(A); and

(II) additional full-time experience per the equivalency calculation in Subsection R162-2c-501a; and

(B)(I) evidence of having originated a minimum of 30 first-lien residential mortgages; and

(II) up to 15 additional points according to the experience points schedule in Subsection R162-2c-501b;

(f) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific LM prelicensing education as certified by the division;

(g) take and pass a lending manager examination as approved by the commission;

(h) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(i) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(j)(i) register in the nationwide database by selecting the "lending manager" license type and completing the associated MU4 form; and

(ii) designate in the nationwide database whether the individual will be acting for the sponsoring entity as:

(A) the principal lending manager;

(B) an associate lending manager; or

(C) a branch lending manager;

(k) authorize a criminal background check and submit fingerprints through the nationwide database;

(l) authorize the nationwide database to provide the individual's credit report to the division for review;

(m) complete, sign, and submit to the division a social security verification form as provided by the division; and

(n) pay all fees through the nationwide database as required by the division and by the nationwide database.

(3) Mortgage entity.

(a) To obtain a Utah license to operate as a mortgage entity, a person shall:

(i) establish that all control persons meet the requirements

for moral character pursuant to R162-2c-202(1);

(ii) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);

(iii) register any other trade name with the Division of Corporations and Commercial Code;

(iv) register the entity in the nationwide database by:

(A) submitting an MU1 form that includes:

(I) all required identifying information;

(II) the name of the PLM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as the entity's qualifying individual;

(III) the name of any LM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as a branch lending manager;

(IV) the name of any individuals who may serve as control persons;

(V) the entity's registered agent; and

(VI) any other trade name under which the entity will operate; and

(B) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;

(v) register any branch office operating from a different location than the entity;

(vi) pay all fees through the nationwide database as required by the division and by the nationwide database;

(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;

(viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;

(ix) provide to the division complete documentation of any action taken by a regulatory agency against:

(A) the entity itself; or

(B) any control person; and

(C) not disclosed through a previous application or renewal; and

(x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.

(b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading to the public.

(4) Branch office.

(a) To register a branch office with the division, a person shall:

(i) obtain a Utah entity license for the entity under which the branch office will be registered;

(ii) submit to the nationwide database an MU3 form that includes:

(A) all required identifying information; and

(B) the name of the LM who will serve as the branch lending manager;

(iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and

(iv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) A person who registers another trade name and operates under that trade name from an address that is different from the address of the entity shall register the other trade name as a branch office pursuant to this Subsection (4).

(c)(i) A PLM may not simultaneously serve as a BLM if Subsection R162-2c-301a(3)(a)(iv)(B) applies.

(ii) An individual may not serve as the BLM for more than one branch at any given time.

(5) Licenses not transferable.

(a) A licensee shall not transfer the licensee's license to any other person.

(b) A licensee shall not allow any other person to work under the licensee's license.

(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

(6) Expiration of test results.

(a) Scores for the mortgage loan originator licensing examination shall be valid for five years.

(b) Scores for the LM exam shall be valid for 90 days.

(7) Incomplete LM application.

(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

(i) an applicant has made a good faith attempt to submit a completed application; but

(ii) requires more time to provide missing documents or to obtain additional information.

(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

(8) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

(9) Other trade names.

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons shall evidence good moral character, honesty, integrity, and truthfulness.

(a) An applicant may not have:

(i) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:

(A) a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering;

(B) any felony in the seven years preceding the day on which an application is submitted to the division;

(C) in the five years preceding the day on which an application is submitted to the division:

(I) a misdemeanor involving moral turpitude; or

(II) a crime in another jurisdiction that is the equivalent of a misdemeanor involving moral turpitude;

(D) in the three years preceding the day on which an application is submitted to the division, any misdemeanor involving a finding of:

(I) fraud;

(II) misrepresentation;

(III) theft; or

(IV) dishonesty;

(ii) had a license as a mortgage loan originator revoked by a government regulatory body at any time, unless the revocation is subsequently vacated or converted;

(iii) had a professional license or registration, whether issued by a Utah regulatory body or by another jurisdiction, suspended, surrendered, canceled, or denied in the five years

preceding the date the individual applies for licensure if the suspension, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to:

- (A) moral character;
- (B) honesty;
- (C) integrity;
- (D) truthfulness; or
- (E) the competency to transact the business of residential mortgage loans;

(iv) in the five years preceding the day on which an application is submitted to the division, been the subject of a bar by the:

- (A) Securities and Exchange Commission;
- (B) New York Stock Exchange; or
- (C) Financial Industry Regulatory Authority;
- (v) had a permanent injunction entered against the individual:

- (A) by a court or administrative agency; and
- (B) on the basis of:
 - (I) conduct or a practice involving the business of residential mortgage loans; or
 - (II) conduct involving fraud, misrepresentation, or deceit.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past other than those specified in this Subsection (1)(a) that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:

- (i) criminal convictions or plea agreements, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;
- (ii) the circumstances that led to any criminal conviction or plea agreement under consideration;
- (iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;
- (iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;
- (v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
- (vi) court findings of fraudulent or deceitful activity;
- (vii) evidence of non-compliance with court orders or conditions of sentencing;
- (viii) evidence of non-compliance with:
 - (A) terms of a diversion agreement still subject to prosecution;
 - (B) a probation agreement; or
 - (C) a plea in abeyance; or
 - (ix) failure to pay taxes or child support obligations.

(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:

- (a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;
- (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
- (c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;
- (d) evidence as to the applicant's business management and employment practices, including the payment of employees, independent contractors, and third parties;
- (e) the extent and quality of the applicant's training and education in mortgage lending;
- (f) the extent and quality of the applicant's training and

education in business management;

(g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;

- (h) evidence of disregard for licensing laws;
- (i) evidence of drug or alcohol dependency;
- (j) sanctions placed on professional licenses; and
- (k) investigations conducted by regulatory agencies relative to professional licenses.

(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:

(a) access the credit information available through the NMLS of:

(i) an applicant for initial licensure, beginning October 18, 2010; and

(ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and

(b) give particular consideration to:

- (i) outstanding civil judgments;
- (ii) outstanding tax liens;
- (iii) foreclosures;
- (iv) multiple social security numbers attached to the individual's name;
- (v) child support arrearages; and
- (vi) bankruptcies.

(4) Age. An applicant shall be at least 18 years of age.

(5) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by the commission.

R162-2c-203. Utah-Specific Education Certification.

(1) School certification.

(a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

- (i) contact information, including:
 - (A) name, phone number, email address, and address of the physical facility;
 - (B) name, phone number, email address, and address of any school director;
 - (C) name, phone number, email address, and address of any school owner; and
 - (D) an e-mail address where correspondence will be received by the school;
- (ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including:

- (A) type of school;
- (B) description of the school's physical facilities; and
- (C) type of instruction method;
- (iv) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;
- (v) proof that each instructor:

- (A) has been certified by the division; or
- (B) is exempt from certification under Subsection

203(5)(f);

(vi) statement of attendance requirements as provided to students;

- (vii) refund policy as provided to students;
- (viii) disclaimer as provided to students; and
- (ix) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each

student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within ten days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(2) School certification expiration and renewal. A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(a) complete a renewal application as provided by the division;

(b) pay a nonrefundable renewal fee;

(c) provide a list of all proposed courses with a projected schedule of days, times, and locations of classes; and

(d) provide the information specified in Subsection 3(c) for Utah-specific course certification for the division's evaluation of each proposed course.

(3) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) a copy of each quiz and examination, with an answer

key; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(4) Course expiration and renewal.

(a) A preclicensing course expires at the same time the school certification expires.

(b) A preclicensing course certification is renewed automatically when the school certification is renewed.

(5) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(6) Instructor certification.

(a) Except as provided in this Subsection (6)(f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator preclicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the lending manager licensing examination.

(d) To certify as an instructor of LM preclicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 6(c);

and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To act as an instructor of continuing education courses, an individual shall certify through the nationwide database.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for Utah-specific prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date.

(ii) To renew an instructor certification for Utah-specific prelicensing education, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(iii) To renew an instructor certification for continuing education, an individual shall certify through the nationwide database.

(h) Reinstatement.

(i) An instructor who is certified by the division may reinstate an expired certification within 30 days of expiration by:

(A) complying with this Subsection (6)(g); and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor who is certified by the division may reinstate a certification that has been expired more than 30 days by:

(A) complying with this Subsection (6)(g);

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(7)(a) The division may monitor schools and instructors

for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301a(5)(a) and R162-2c-301a(6)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal, Reinstatement, and Reapplication.

(1) Deadlines.

(a) License renewal.

(i) To renew on time, a person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(ii)(A) A person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(B) A person who is not required to renew in the first year of licensure pursuant to this Subsection (1)(a)(ii)(A) shall nevertheless complete, prior to December 31 of the first year of licensure, continuing education as required for renewal pursuant to Subsection R162-2c-204(3)(a) if the individual did not complete the mortgage loan originator national pre-licensing education during the calendar year.

(b) Reinstatement. The deadline to reinstate a license that expires on December 31 is February 28 of the year following the date of expiration.

(c) After the reinstatement deadline passes, a person shall reapply for licensure pursuant to Subsection R162-2c-204(3)(c).

(2) Qualification for renewal.

(a) Character.

(i) Individuals applying to renew or reinstate a license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony that resulted in a conviction or plea agreement during the renewal period; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the

standard for competency required of individual applicants.

(3) Education requirements for renewal, reinstatement, and reapplication.

(a) License renewal.

(i) Except as provided in this Subsection (3)(a)(ii), an individual who holds an active license as of January 1 of the calendar year shall complete, within the calendar year in which the individual's license is scheduled to expire, the following courses, none of which may be duplicative of courses taken in the same or preceding renewal period:

(A) beginning with the 2014 renewal, a division-approved course on Utah law, completed annually; and

(B) eight hours of continuing education approved through the nationwide database, as follows:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending issues);

(III) two hours training related to lending standards for non-traditional mortgage products; and

(IV) one hour undefined instruction on mortgage origination.

(ii) An individual who completes the mortgage loan originator national pre-licensing education between January 1 and December 31 of the calendar year is exempt from continuing education, including the division-approved course on Utah law specified in Subsection (3)(a)(i)(A), for the renewal period ending December 31 of the same calendar year.

(b) Reinstatement. To reinstate an expired mortgage loan originator or lending manager license, an individual shall, by February 28 of the calendar year following the date on which the license expired, complete:

(i) the division-approved course on Utah law specified in Subsection (3)(a)(i)(A); and

(ii) eight hours of continuing education:

(A) in topics listed in this Subsection (3)(a)(i)(B); and

(B)(I) approved by the nationwide database as "continuing education" if completed prior to the date of expiration; or

(II) approved by the nationwide database as "late continuing education" if completed between the date of expiration and the deadline for reinstatement.

(c) Reapplication.

(i) To reapply for licensure after the reinstatement deadline passes and by or before December 31 of the calendar year following the date on which the license expired, an individual shall complete the division-approved course on Utah law and continuing education requirement outlined in this Subsection (3)(b).

(ii) To reapply for licensure after the deadline described in this Subsection (3)(c)(i) passes, an individual shall:

(A) complete eight hours of continuing education:

(I) in topics listed in this Subsection (3)(a)(i); and

(II) approved by the nationwide database as "late continuing education"; and

(B) within the 12-month period preceding the date of reapplication, take and pass:

(I) the 15-hour Utah-specific mortgage loan originator pre-licensing education, if the terminated license was a mortgage loan originator license; or

(II) the 40-hour Utah-specific lending manager pre-licensing education and associated examination, if the terminated license was a lending manager license; and

(C) complete the division-approved course on Utah law specified in Subsection (3)(a)(i)(A).

(4) Renewal, reinstatement, and reapplication procedures.

(a) An individual licensee shall:

(i) evidence having completed education as required by Subsection R162-2c-204(3);

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide

database; and

(iii) submit through the nationwide database:

(A) a request for renewal, if renewing or reinstating a license; or

(B) a request for a new license, if reapplying; and

(iv) pay all fees as required by the division and by the nationwide database, including all applicable late fees.

(b) An entity licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all fees, including all applicable late fees, required by the division and by the nationwide database.

R162-2c-205. Notification of Changes.

(1) An individual licensee who is registered with the nationwide database shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s); and

(C) e-mail address(es);

(iii) sponsoring entity; and

(iv) license status (sponsored or non-sponsored); and

(b) pay all change fees charged by the national database and the division.

(2) An entity licensee shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s);

(C) fax number(s); and

(D) e-mail address(es);

(iii) sponsorship information;

(iv) control person(s);

(v) qualifying individual;

(vi) license status (sponsored or non-sponsored); and

(vii) branch offices or other trade names registered under the entity license; and

(b) pay any change fees charged by the national database and the division.

R162-2c-209. Sponsorship.

(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:

(a) the entity;

(b) a branch office registered under the license of the entity; or

(c) another trade name registered under the license of the entity.

(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:

(a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and

(b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

(3) An individual who holds a license as a mortgage loan

originator may perform loan processing activities regardless of whether:

- (a) the individual's license is sponsored by a licensed entity at the time the loan processing activities are performed; or
- (b) the individual is employed by a licensed entity.

R162-2c-301a. Unprofessional Conduct.

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

- (i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;
- (ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;
- (iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:
 - (A) appraisal fees;
 - (B) inspection fees;
 - (C) credit reporting fees; and
 - (D) insurance premiums;
- (iv) turn all records over to the sponsoring entity for proper retention and disposal; and
- (v) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

- (i) charge for services not actually performed;
- (ii) require a borrower to pay more for third party services than the actual cost of those services;
- (iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;
- (iv) alter an appraisal of real property; or
- (v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:
 - (A) providing a buyer or seller of real estate with a comparative market analysis;
 - (B) assisting a buyer or seller to determine the offering price or sales price of real estate;
 - (C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;
 - (D) advertising the sale of real estate by use of any advertising medium;
 - (E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or
 - (F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

- (i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;
- (ii) owns real property that the mortgage loan originator offers "for sale by owner"; or
- (iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:
 - (A) the owner's contact information;
 - (B) the owner's role;

(C) the mortgage loan originator's contact information; and

- (D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or
- (iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:
 - (A) contact information for the brokerage;
 - (B) role of the brokerage;
 - (C) mortgage loan originator's contact information; and
 - (D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) Lending manager.

(a) Affirmative duties. A lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405.

(b) An LM who is designated in the nationwide database as the principal lending manager of an entity shall:

- (i) be accountable for the affirmative duties outlined in Subsection (1)(a);
- (ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:
 - (A) federal law governing residential mortgage lending;
 - (B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and
 - (C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;
- (iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:
 - (A) directing the details and means of their work activities;
 - (B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;
 - (C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and
 - (D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

(A) complies with HUD/FHA requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process; and

(viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators; and

(ix)(A) actively supervise:

(I) any ALM sponsored by the entity; and

(II) any BLM who is assigned to oversee the mortgage loan origination activities of a branch office; and

(B) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators, unlicensed staff, and entity operations throughout all locations.

(c) An LM who is designated as a branch lending manager in the nationwide database shall:

- (i) work from the branch office the LM is assigned to manage;
 - (ii) personally oversee all mortgage loan origination activities conducted through the branch office; and
 - (iii) personally supervise all mortgage loan originators and unlicensed staff affiliated with the branch office.
- (d) Prohibited conduct. An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An LM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

- (A) appraisal fees;
- (B) inspection fees;
- (C) credit reporting fees; and
- (D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request;

(iv)(A) notify the division of the location from which the entity's PLM will work; and

(B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Section 61-2c-102(1)(e); and

(v) if using an incentive program, strictly comply with Subsection R162-2c-301b.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or LM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any final disciplinary action taken against a licensee for unprofessional conduct.

(b) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(ix),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix) comply with a division request for information within 10 business days of the date of the request;

(x) upon completion of the course requirements, provide a certificate of completion to each student; and

(xi) ensure that the material is current in courses taught on:

(A) Utah statutes;

(B) Utah administrative rules;

(C) federal laws; and

(D) federal regulations.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(vi) through (ix);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught; and

(ii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any

prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

- (i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or
- (ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-301b. Employee Incentive Program.

(1)(a) Under this Subsection R162-2c-301b, a licensed entity may pay an incentive to a mortgage loan originator who is sponsored by the entity and licensed in:

- (i) Utah; or
 - (ii) another state.
- (b) A licensed entity may not pay an incentive to an unlicensed employee.

(2) A PLM or entity that uses an incentive program shall:

(a) prior to paying any incentive to an individual, specifically describe in the individual's contract for employment:

(i) the methodology by which any incentive will be calculated, including the limitation specified in Subsection (2)(b); and

(ii) the circumstances under which an incentive will be paid, including the limitation specified in this Subsection (2)(c); and

(b) limit the dollar amount or value of any single incentive to \$300 or less;

(c) limit the sponsored mortgage loan originator to receiving no more than three incentive payments in a calendar year; and

(d)(i) keep complete records of all incentive payments made, including:

- (A) borrower name;
- (B) property address;
- (C) transaction closing date;
- (D) date of incentive payment;
- (E) name of employee receiving incentive payment; and
- (F) amount paid; and

(ii) make such records available to the division for audit or inspection upon request.

(3) Before paying an incentive to a mortgage loan originator who is not licensed in Utah, the PLM or entity shall ensure that the individual did not:

(a) solicit or advertise to the client regarding financing for a Utah property; or

(b) perform any other activity that constitutes the business of residential mortgage loans pursuant to Section 61-2c-102(1)(h).

R162-2c-302. Requirements for Record Retention and Disposal.

(1) Record Retention.

(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain and safeguard for the period set forth in Section 61-2c-302 the following records:

- (i) application forms;
- (ii) disclosure forms;
- (iii) truth-in-lending forms;
- (iv) credit reports and the explanations therefor;
- (v) conversation logs;
- (vi) verifications of employment, paycheck stubs, and tax returns;

(vii) proof of legal residency, if applicable;

(viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;

(ix) underwriter denials;

(x) notices of adverse action;

(xi) loan approval;

(xii) name and contact information for the borrower in the transaction; and

(xiii) all other records required by underwriters involved with the transaction or provided to a lender.

(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).

(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

(2) Record Disposal. A person who disposes of records at the end of the retention period shall destroy personal information by shredding, erasing, or otherwise making the information indecipherable.

(3) Responsible Party.

(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention, maintenance, safeguarding, and disposal of records.

(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention, maintenance, safeguarding, and disposal of records.

R162-2c-401. Administrative Proceedings.

(1) Request for agency action.

(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:

- (i) an original or renewal application for a license;
- (ii) an original or renewal application for a school certification;
- (iii) an original or renewal application for a course certification; and
- (iv) an original or renewal application for an instructor certification.

(b) Any other request for agency action shall:

- (i) be in writing;
- (ii) be signed by the requestor; and
- (iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):

- (i) a complaint against a licensee; and
- (ii) a request that the division commence an investigation or a disciplinary action against a licensee.

(2) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(3) Informal adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:

- (i) a proceeding on an original or renewal application for a license;
- (ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and

(iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.

(b) A hearing shall be held in an informal adjudicative

proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:

(a) the issuance of an original or renewed license when the application has been approved by the division;

(b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;

(c) the issuance of any interpretation of statute, rule, or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division;

(d) the denial of an application for an original or renewed license on the ground that it is incomplete;

(e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

(f) a proceeding on an application for an exemption from a continuing education requirement.

(5) Hearings required. A hearing before the commission shall be held in the following circumstances:

(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Section R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 or Subsection R162-2c-201, as applicable, written notice of the date, time, and place scheduled for the hearing.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to the witness.

(h) Upon ordering a licensee to appear for a hearing, the

division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to R151-4-110(1)(a), an attorney may represent a respondent.

(7) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from each witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2c-402. Disciplinary Action.

In reviewing a request to convert a revocation to a suspension pursuant to Section 61-2c-402(4)(a):

(1) The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering.

(2) The commission may consider converting a revocation that was based on other criminal history, including:

(a) a plea in abeyance, diversion agreement, or similar

disposition of a felony charge; and

(b) a misdemeanor offense, regardless of the nature of the charge or the disposition of the case.

R162-2c-501a. Optional Experience Equivalency Calculation.

(1) Thirty months of full-time experience in the following activities shall be considered equivalent to one year of experience as a first-lien residential mortgage loan originator:

- (a) loan underwriter;
- (b) mortgage loan manager;
- (c) loan processor;
- (d) certified mortgage prelicensing instructor; and
- (e) second-lien residential loan originator.

(2) An applicant who wishes to receive experience credit under this Subsection R162-2c-501a, but who cannot demonstrate experience equivalent to a full year of first-lien residential mortgage loan origination shall:

(a) be awarded experience credit as deemed appropriate by the division; and

(b) complete the experience requirement through additional experience as a first-lien residential mortgage loan originator, as determined by the division.

R162-2c-501b. Optional Experience Points Table.

TABLE
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Professional activity	possible points
(1) Loan underwriter	0.5 pt/month
(2) Mortgage loan manager	0.5 pt/month
(3) Loan processor	0.5 pt/month
(4) Certified mortgage prelicensing instructor	0.5 pt/month
(5) Second-lien residential loan originator	0.5 pt/month

**KEY: residential mortgage, loan origination, licensing, enforcement
August 7, 2013**

**61-2c-103(3)
61-2c-402(4)(a)**

R162. Commerce, Real Estate.**R162-2e. Appraisal Management Company Administrative Rules.****R162-2e-101. Title.**

This chapter is known as the "Appraisal Management Company Administrative Rules."

R162-2e-102. Definitions.

- (1) "Affiliation" means a business association:
- (a) between:
 - (i) two individuals registered, licensed, or certified under Section 61-2b; or
 - (ii) an individual registered, licensed, or certified under Section 61-2b and:
 - (A) an appraisal entity; or
 - (B) a government agency;
 - (b) for the purpose of providing an appraisal service; and
 - (c) regardless of whether an employment relationship exists between the parties.
- (2) The acronym "AMC" stands for appraisal management company.
- (3) As used in Subsection R162-2e-201(3)(c)(ii), "business day" means a day other than:
- (a) a Saturday;
 - (b) a Sunday;
 - (c) a state or federal holiday; or
 - (d) any other day when the division is closed for business.
- (4) "Client" is defined in Section 61-2e-102(10).
- (5) "Competency statement" means a statement provided by the AMC to the appraiser that, at a minimum, requires the appraiser to attest that the appraiser:
- (a) is competent according to USPAP standards;
 - (b) recognizes and agrees to comply with:
 - (i) laws and regulations that apply to the appraiser and to the assignment;
 - (ii) assignment conditions; and
 - (iii) the scope of work outlined by the client; and
 - (c) has access, either independently or through an affiliation pursuant to Subsection (1), to the records necessary to complete a credible appraisal, including:
 - (i) multiple listing service data; and
 - (ii) county records.
- (6)(a) "Employee" means an individual:
- (i) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and
 - (ii) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person.
- (b) "Employee" does not include an independent contractor who performs duties other than at the discretion of, and subject to the supervision and instruction of, another person.
- (c) For purposes of applying Subsection R162-2e-401(1)(g), an appraiser who completes an assignment is considered to be an employee of the AMC that offers the assignment if:
- (i) this subsection (a) describes the employment relationship between the appraiser and the AMC; or
 - (ii) pursuant to this subsection (a), the appraiser is an employee of a company:
 - (A) that is wholly owned by the AMC; or
 - (B) in which the AMC owns a controlling interest.
- (7) "Select" means:
- (a) for purposes of composing the AMC appraiser panel, to review and evaluate the qualifications of an appraiser who applies to be included on the AMC's appraiser panel; and
 - (b) for purposes of assigning an appraisal activity to an appraiser:

(i) to choose from the AMC's appraiser panel an individual appraiser or appraisal entity to complete an assignment; or

(ii) to compile, from among the appraisers included in the AMC's appraiser panel, an electronic distribution list of appraisers to whom an assignment will be offered through e-mail.

(8) The acronym "USPAP" stands for Uniform Standards of Professional Appraisal Practice.

R162-2e-201. Registration Required - Qualification for Registration.

(1) The division may not register or renew the registration of an AMC that fails to:

(a) comply with any provision of Utah Code Title 61, Chapter 2e, "Appraisal Management Company Registration and Regulation Act";

(b) register with the Utah Division of Corporations and Commercial Code and provide to the division its certificate of existence;

(c) pursuant to this Subsection (4)(a), evidence having secured a surety bond that:

(i) is in the amount of \$25,000; and

(ii) provides, throughout the full period of registration, for the division to make a claim:

(A) on behalf of an appraiser; and

(B) for unpaid fees as awarded to the appraiser in a final judgment entered by a court of competent jurisdiction; or

(d) comply with any provision of these rules.

(2) The division shall schedule a hearing before the board for an AMC that:

(a)(i) applies for registration or renewal of registration;

(ii) has a control person who discloses, or the division finds through its own research, an issue that might affect the control person's moral character; and

(iii) the division determines that the board should be aware of the issue; or

(b) fails to provide an adequate explanation for the AMC's:

(i) plan to ensure the use of licensed appraisers in good standing;

(ii) plan to ensure the integrity of the appraisal review process; or

(iii) plan for record keeping.

(3)(a) An AMC shall register with the division in the name of the legal entity under which it is registered with the Utah Division of Corporations and Commercial Code and conducts the business of appraisal management in Utah and in other states.

(b) An AMC shall notify the division of a dba, trade name, or assumed business name under which the registered legal entity operates in Utah:

(i) at the time of registration; or

(ii) if applicable, immediately upon beginning to operate under such dba, trade name, or assumed business name.

(c) If an AMC changes its registered name, a dba, a trade name, or an assumed business name, the AMC shall notify the division:

(i) in writing; and

(ii) within ten business days of making the change.

(4)(a) The deadline by which an AMC shall demonstrate that the entity has obtained a surety bond pursuant to Subsection (1)(c) is as follows:

(i) For an AMC that applies for registration on or after October 1, 2012, the bond shall be obtained as a condition for initial registration.

(ii) For an AMC that obtained its initial registration prior to January 1 2011 and applies for renewal on or after October 1, 2012, the bond shall be obtained as a condition of the 2012

renewal.

(iii) For an AMC that is not described by this Subsection (4)(a)(i) or (ii), the deadline for obtaining the surety bond shall be January 1, 2013.

(b) Failure to comply with an applicable deadline as outlined in this Subsection (4)(a) shall result in the automatic suspension of an AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.

(c) If an AMC's surety bond lapses or is cancelled during the period of registration, the division shall:

(i) allow the AMC 30 days in which to comply with the surety bond requirement; and

(ii) if the AMC fails to obtain or reinstate a surety bond within 30 days, immediately and automatically suspend the AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.

R162-2e-201a. Claims Against an AMC Bond.

(1) To bring a claim against a bond that is held by an AMC pursuant to Section 61-2e-204(2)(c) and Subsection R162-2e-201(1)(c), an appraiser shall:

(a) demonstrate that a court of competent jurisdiction has awarded the appraiser a final judgment against the AMC for the fee(s) claimed;

(b) demonstrate that the appraiser earned the fee(s) claimed and that the AMC has had a reasonable period of time in which to tender payment; and

(c) submit a complaint to the division alleging nonpayment of fee(s):

(i) after a reasonable period of time for payment has passed; and

(ii) no later than 30 days after obtaining a judgment as required under this Subsection (1)(a).

(2) In evaluating whether an AMC has had a reasonable period of time in which to tender payment, the division shall consider the following:

(a) if a payment deadline is specified in the contract that applies to the assignment for which the appraiser claims an unpaid fee, whether the payment deadline has passed; or

(b) if the applicable contract is silent as to a period for payment, whether at least 90 days have passed since the date on which the appraiser submitted a report that complied with the assignment, including all scope of work requirements, as determined by the division in its sole discretion.

R162-2e-301. Use of Licensed or Certified Appraisers.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide to the division a statement signed by its designated controlling person that explains the AMC's system for verifying that:

(1) an appraiser who is added to the panel is licensed or certified; and

(2) an appraiser who is assigned to complete a real estate appraisal remains licensed or certified in good standing.

R162-2e-302. Adherence to Standards.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide a statement to the division, signed by its designated controlling person, certifying that the AMC verifies that each appraisal assignment offered to an appraiser acting as an independent contractor is:

(1) signed by an appraiser who is included in the AMC's panel at the time the assignment is offered; and

(2) includes the information outlined in Subsection 304(1)(b)-(c).

R162-2e-303. Recordkeeping.

An AMC's statement of recordkeeping required upon registration with the division and biennially thereafter shall be signed by its designated controlling person and shall describe:

(1) its system for maintaining a record of:

(a)(i) the name of the appraiser who accepts each assignment and signs the corresponding appraisal report; and

(ii) if an assignment is accepted by an appraisal entity, the name of the entity that accepts the assignment; and

(b) the client that requested the appraisal report;

(2) the format in which the records required to be kept under Section 61-2e-303(1) are maintained;

(3) an explanation of the system through which the AMC backs up any records kept as required by Section 61-2e-303(1) that are maintained in an electronic format;

(4) the location where the records are kept; and

(5) the name of the records custodian.

R162-2e-304. Required Disclosure.

In addition to the disclosures required by Section 61-2e-304, an AMC shall:

(1) at the time an assignment is offered, disclose to the appraiser:

(a) the total amount that the appraiser may expect to earn from the assignment:

(i) disclosed as a dollar amount; and

(ii) delineating any fees or costs that will be charged by the AMC to the appraiser;

(b)(i) the property address;

(ii) the legal description; or

(iii) equivalent information that would allow the appraiser to determine whether the appraiser has been involved with any service regarding the subject property within the three years preceding the date on which the assignment is offered;

(c) the assignment conditions and scope of work requirements in sufficient detail to allow the appraiser to determine whether the appraiser is competent to complete the assignment; and

(d) any known deadlines within which the assignment must be completed;

(2) at or before the time the appraiser accepts an assignment, obtain the appraiser's acknowledgment as to the AMC's competency statement;

(3) before requiring the appraiser to submit a completed report, disclose to the appraiser:

(a) the total fee that will be collected by the AMC for the assignment; and

(b) the total amount that the AMC will retain from the fee charged, disclosed as a dollar amount; and

(4) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:

(a) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and

(b) the total compensation retained by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

R162-2e-305. Employee Requirements.

(1) An AMC seeking registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has taken and passed the 15-hour national USPAP course.

(2) An AMC seeking renewal of the company's registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

- (a) is a licensed or certified appraiser in good standing; or
- (b) has completed the seven-hour national USPAP update course.

R162-2e-401. Unprofessional Conduct.

(1) An entity that is registered or required to be registered with the division as an AMC pursuant to Section 61-2e-201 commits unprofessional conduct if the entity:

(a) requires an appraiser to modify any aspect of the appraisal report, unless the modification complies with Section 61-2e-307;

(b) unless first prohibited by the client or applicable law, prohibits or inhibits an appraiser from contacting:

- (i) the client;
- (ii) a person licensed under Section 61-2c or Section 61-2f; or
- (iii) any other person with whom the appraiser reasonably needs to communicate in order to obtain information necessary to complete a credible appraisal report;

(c) requires the appraiser to do anything that does not comply with:

- (i) USPAP; or
- (ii) assignment conditions and certifications required by the client;
- (d) makes any portion of the appraiser's fee or the AMC's fee contingent on a favorable outcome, including but not limited to:

- (i) a loan closing; or
- (ii) a specific dollar amount being achieved by the appraiser in the appraisal report;

(e) requests, for the purpose of facilitating a mortgage loan transaction,

- (i) a broker price opinion; or
- (ii) any other real property price or value estimation that does not qualify as an appraisal;

(f) charges an appraiser:

- (i) for a service not actually performed; or
- (ii) for a fee or cost that:

(A) is not accurately disclosed pursuant to Subsection R162-2e-304(1)(a)(ii); or

(B) exceeds the actual cost of a service provided by a third party;

(g) uses or retains an employee to complete an appraisal assignment without first disclosing to the client that the appraiser is an employee of the company, such that the company is acting in the capacity of an appraisal firm rather than as an AMC pursuant to Utah Code Subsection 61-2e-102(4); or

(h) when acting in the capacity of an AMC pursuant to Utah Code Subsection 61-2e-102(4), uses or retains an employee appraiser to complete an appraisal assignment.

(2) An AMC commits unprofessional conduct and creates a violation by the appraiser of R162-2g-502b(1)(f) if the AMC requires the appraiser to:

- (a) accept full payment; and
- (b) remit a portion of the full payment back to the AMC.

R162-2e-402. Administrative Proceedings.

(1) An adjudicative proceeding before the board shall be conducted as an informal adjudicative proceeding.

(2)(a) A hearing before the board will be held in:

(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2e-307 or 61-2e-402(2) against an

AMC or an owner or controlling person of an AMC; and

(iv) an appeal from an automatic revocation under Section 61-2e-203(3)(b), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application that is denied by the division on the grounds that the controlling person's attestation to upstanding moral character is false.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of an AMC registration by the division;

(ii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and

(iii) the denial of renewal or reinstatement of an AMC registration for incompleteness or for failure to comply with a requirement found in statute or rule.

(3)(a) An application for an AMC registration shall be deemed a request for agency action.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against an AMC, a controlling person, or an appraiser on the panel of an AMC requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in Subsection R162-2e-402(5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2e-402, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division through a registration process.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

(i) on its own behalf; or

(ii) on the behalf of a party.

(iii) on the behalf of a witness.

- (ii) on behalf of a party where the party:
 - (A) makes a written request;
 - (B) assumes responsibility for effecting service of the subpoena; and
 - (C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.
- (g) Upon ordering a person who is registered or required to be registered as an AMC to appear for a hearing, the division shall provide to the person the information that the division will introduce at the hearing.
- (h) Intervention is prohibited.
- (i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:
 - (i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or
 - (ii) Title 52, Chapter 4, the Open and Public Meetings Act.
- (j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.
- (5) Additional procedures for disciplinary proceedings.
 - (a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:
 - (i) a notice of agency action;
 - (ii) a petition setting forth the allegations made by the division;
 - (iii) a witness list, if applicable; and
 - (iv) an exhibit list, if applicable.
 - (b) Answer.
 - (i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.
 - (ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.
 - (iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (5)(a).
 - (c) Witness and exhibit lists.
 - (i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.
 - (ii) Any witness list shall contain:
 - (A) the name, address, and telephone number of each witness; and
 - (B) a summary of the testimony expected from the witness.
 - (iii) Any exhibit list:
 - (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
 - (B) shall be accompanied by copies of the exhibits.
 - (d) Pre-hearing motions.
 - (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
 - (ii) The division director shall receive and rule upon any pre-hearing motions.

KEY: administrative proceedings, appraisal management company, conduct, registration
August 28, 2013

61-2e-102(4)
 61-2e-103
 61-2e-307
 61-2e-305
 61-2e-402(1)

R162. Commerce, Real Estate.**R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.****R162-2g-101. Authority.**

(1) The authority to promulgate rules governing the appraisal industry is granted by Section 61-2g-201(2)(h).

(2) The authority to establish and collect fees is granted by Section 61-2g-202(1).

(3) The authority to exempt specific persons from complying with USPAP standards is granted by Section 61-2g-205(5)(c) within certain limitations as imposed by Section 61-2g-403(1)(c).

R162-2g-102. Definitions.

(1) "Affiliation" means an ongoing business association:
 (a) between:
 (i) two individuals registered, licensed, or certified under Section 61-2g; or

(ii) an individual registered, licensed, or certified under Section 61-2g and:

(A) an appraisal entity; or
 (B) a government agency;
 (b) for the purpose of providing an appraisal service; and
 (c) regardless of whether an employment relationship exists between the parties.

(2) The acronym "AQB" stands for the Appraiser Qualifications Board of the Appraisal Foundation.

(3) "Board" means the Utah Real Estate Appraiser Licensing and Certification Board.

(4) "Business day" means a day other than:

(a) a Saturday;
 (b) a Sunday; or
 (c) a federal or state holiday.

(5) "Classification" means the type of license or certification held by an appraiser.

(6) "Day" means calendar day unless specified as "business day."

(7) "Desk review" means review of an appraisal:

(a) including verification of the data; but
 (b) not including a physical inspection of the property.

(8) "Distance education" means an education process based on the geographical separation of student and instructor, including:

(a) computer conferencing;
 (b) satellite teleconferencing;
 (c) interactive audio;
 (d) interactive computer software;
 (e) Internet-based instruction; and
 (f) other interactive online courses.

(9) "Division" means the Division of Real Estate of the Department of Commerce.

(10) "Draft report" means an appraisal report that is distributed prior to being completed, as provided in Subsection R162-2g-502b(1).

(11) "Entity" means:

(a) a corporation;
 (b) a partnership;
 (c) a sole proprietorship;
 (d) a limited liability company;
 (e) another business entity; or
 (f) a subsidiary or unit of an entity described in this Subsection (11).

(12) "Field review" means review of an appraisal, including:

(a) a physical inspection of the property; and
 (b) verification of the data.

(13) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to R162-2g-307c(4).

(14) "Person" means an individual or an entity.

(15) "Reinstatement" means renewing a license or certification for an additional period after its expiration date has passed, but prior to 12 months after the expiration date.

(16) The acronym "RELMS" stands for Real Estate Licensing and Management System, which is the online database through which individuals registered, licensed, or certified under these rules must submit certain information to the division.

(17) "Renewal" means reissuing a license or certification upon its expiration for an additional period.

(18) "School" means:

(a) an accredited college, university, junior college, or community college;

(b) any state or federal agency or commission;

(c) a nationally recognized real estate appraisal or real estate related organization, society, institute, or association; or
 (d) any school or organization approved by the board.

(19) "School director" means an authorized individual in charge of the educational program at a school.

(20) "Trainee" means a person who is working under the direct supervision of a state-certified residential appraiser or a state-certified general appraiser to earn experience hours for licensure, and who meets the requirements of Subsection R162-2g-302.

(21) "Transaction value" means:

(a) for loans or other extensions of credit, the amount of the loan or extension of credit;

(b) for sales, leases, purchases, and investments in, or exchanges of, real property, the market value of the real property interest involved; and

(c) for the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(22) The acronym "USPAP" stands for the current edition of the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.

R162-2g-302. Application for Trainee Registration.

(1) Registration required.

(a) An individual who intends to obtain a license to practice as a state-licensed appraiser shall first register with the division as a trainee.

(b) The division and the board shall not award or recognize experience hours toward licensure for any appraisal work that is performed by an individual during a period of time when the individual is not registered as a trainee.

(2) Character. An individual registering with the division as a trainee shall evidence honesty, integrity, and truthfulness.

(a) A trainee applicant shall be denied registration for:

(i) a felony that resulted in:

(A) a conviction occurring within five years of the date of application; or

(B) a jail or prison release date falling within five years of the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within three years of the date of application; or

(B) a jail or prison release date falling within three years of the date of application.

(b) A trainee applicant may be denied registration upon consideration of the following:

(i) criminal convictions and pleas entered at any time prior to the date of application;

(ii) the circumstances that led to any criminal convictions or pleas under consideration;

(iii) past acts related to honesty or moral character, with

particular consideration given to any such acts involving the appraisal business;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity in civil lawsuits;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with terms of a probation agreement, plea in abeyance, or diversion agreement; and

(ix) failure to pay taxes or child support obligations.

(3) Competency. An individual registering with the division as a trainee shall evidence competency. In evaluating an applicant for competency, the division and board may consider any evidence, including the following:

(a) civil judgments, with particular consideration given to any such judgments involving the appraisal business;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) the extent and quality of the applicant's training and education in appraisal;

(d) the extent of the applicant's knowledge of the Utah Real Estate Appraiser Licensing and Certification Act;

(e) evidence of disregard for licensing laws;

(f) evidence of drug or alcohol dependency; and

(g) the amount of time that has passed since any incident under consideration.

(4)(a) Pre-licensing education. Within the five-year period preceding the date of application, an applicant shall successfully complete 75 classroom hours:

(i) approved by the AQB; and

(ii)(A) certified by the division pursuant to Subsection R162-2g-307b(1)-(3); or

(B) not required to be certified by the division pursuant to Subsection R162-2g-307b(6).

(b) The 75 hours of required education shall include:

(i) 30 hours of appraisal principles;

(ii) 30 hours of appraisal procedures; and

(iii) the 15-hour National USPAP course, or its equivalent.

(c) The 15-hour National USPAP Course or its equivalent may not be accepted by the division as qualifying education unless it is:

(i) taught by an instructor who:

(A) is a state-certified residential or state-certified general appraiser; and

(B) has been certified by the AQB; or

(ii) approved as a distance education course by the AQB and International Distance Education Certification Center.

(d) Examination. An applicant shall evidence having passed the final examination in all pre-licensing courses.

(5) Application to the division. An applicant shall submit the following to the division:

(a) a completed application as provided by the division;

(b) course completion certificates for the 75 hours of pre-licensing education;

(c)(i) two fingerprint cards in a form acceptable to the division; or

(ii) evidence that the applicant's fingerprints have been successfully scanned at a testing center;

(d) all court documents related to any past criminal proceeding;

(e) complete documentation of any sanction taken against any license in any jurisdiction;

(f) a signed letter of waiver authorizing the division to:

(i) obtain the fingerprints of the applicant;

(ii) review past and present employment records;

(iii) review education records; and

(iv) conduct a criminal background check;

(g) the fee for the criminal background check;

(h) the name of the state-certified appraiser(s) with whom the trainee is affiliated;

(i) the name and business address of any appraisal entity or government agency with which the trainee is affiliated; and

(j) the nonrefundable application fee.

(6) Affiliation with certified appraiser(s). Applicants shall affiliate with at least one supervising certified appraiser and evidence that affiliation by:

(a) identifying each supervising certified appraiser on a form supplied by the division; and

(b) obtaining each supervising certified appraiser's signature on the application.

R162-2g-304a. Application to Sit for the State-Licensed Appraiser Exam.

(1) An applicant to sit for the state-licensed appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division:

(i) documenting all experience hours completed by the applicant from the date of trainee registration to the date of application for licensure; and

(ii) evidencing at least 2,000 hours of appraisal experience:

(A) pursuant to Subsection R162-2g-304d;

(B) completed during the time when the applicant was registered with the division as a trainee; and

(C) accrued in no fewer than 12 months; and

(b) a nonrefundable application fee.

(2)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (2)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

R162-2g-304b. Application to Sit for the State-Certified Residential Appraiser Exam.

(1) An applicant to sit for the state-licensed residential appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 2,500 hours of total appraisal experience, at least 500 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than 24 months; and

(b) a nonrefundable application fee.

(2)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (2)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

R162-2g-304c. Application to Sit for the State-Certified General Appraiser Exam.

(1) An applicant to sit for the state-certified general appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 3,000 hours of total appraisal experience, 1,000 hours of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser or state-certified residential appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than 30 months; and

(b) except as provided in this Subsection (3)(a), a nonrefundable application fee.

(2)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (2)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(3)(a) A state-licensed appraiser who, within six months of renewing the license, meets the requirements for certification and files a completed application shall pay a transfer fee rather than an application fee.

(b) A certification that is obtained under this Subsection (3)(a) shall expire on the same date that the license was due to expire prior to transfer.

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for evaluation and approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years prior to the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(v) personal property appraisals; or

(vi) an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2:

(i) appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal that includes an interior inspection of the subject property; and

(ii) no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 250 experience hours may be earned from appraisal of vacant land.

(f) Appraisals on commercial or multi-unit form reports shall be awarded 75% of the credit normally awarded for the appraisal.

(g)(i) If an applicant's education was approved prior to January 1, 2008 and his or her experience was approved prior to January 1, 2011 (under a system referred to by the division and industry as a segmented application), but the applicant did not pass the applicable examination required for licensure or certification by December 31, 2010, the applicant shall, by December 31, 2011:

(A) complete all additional education, as required under the AQB standards;

(B) pass the required examination applicable to the license or certification being sought by the individual; and

(C) submit a complete application to the division.

(ii) An applicant who fails to comply with the December 31, 2011 deadline established in this Subsection (2)(g)(i) shall:

(A) complete all additional education as required under the AQB standards;

(B) pass the required examination applicable to the license or certification sought by the individual;

(C) submit recent appraisals that meet the requirements of all applicable statutes and rules for review by the experience review committee; and

(D) submit a complete application to the division according to deadlines established in Subsection R162-2g-304f(1).

(3) Specific restrictions applicable to trainees applying for licensure.

(a) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;
 (G) participation in income analysis: 30% of total hours;
 (H) participation in the final reconciliation of value: 10% of total hours; and

(I) participation in report preparation: 20% of total hours.

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) measurement of the exterior of a property that is the subject of an appraisal; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove more than 50% participation in the:

(A) data collection;

(B) verification of data;

(C) reconciliation;

(D) analysis;

(E) identification of property and property interests;

(F) compliance with USPAP standards; and

(G) preparation and development of the appraisal report;

or

(ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of the hours submitted from:

(A) the residential experience hours schedule found in Appendix 1; or

(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6)(b)-(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standard 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight residential appraisals:

(A) conforming to USPAP Standards 1 and 2; and

(B) including the following property types:

(I) vacant property;

(II) two- to four-unit dwelling;

(III) non-complex single-family unit; and

(IV) complex single-family unit; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2.

(e) No more than 60% of the total hours submitted for licensure or certification may be earned from any combination of appraisal assignments related to:

(i) property types identified in Appendix 3(a)(i) and (ii);

(ii) property types identified in Appendix 3(b)(i) and (ii);

(iii) property types identified in Appendix 3(c)(i) and (ii);

(iv) property types identified in Appendix 3(d)(i) and (ii);

(v) property types identified in Appendix 3(e)(i) and (ii),

and

(vi) property types identified in Appendix 3(f)(i).

(f) No more than 25% of the total hours submitted for licensure or certification may be earned from appraisal assignments related to property types identified in Appendix 3(f)(iii) and (iv) combined.

(g) No more than 20% of the total hours submitted for licensure or certification may have been earned from appraisal assignments related to property types identified in Appendix 3(g).

(h)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 85% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 85% shall be awarded no credit.

(i) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards Rule 3 when the appraiser is required to comply with the rule.

(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

(A) preliminary valuation estimates;

(B) range of value estimates or similar studies;

(C) other real estate-related experience gained by:

(I) bankers;

(II) builders;

(III) city planners and managers; or

(IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) The following activities, if performed in accordance with USPAP Standards Rules 4 and 5, may be used to satisfy up to 50% of the experience required for certification:

(A) appraisal analysis;

(B) real estate counseling or consulting services; and

(C) feasibility analysis/study.

(iv) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in

Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

(a) verification with the clients;

(b) submission of selected reports to the board; and

(c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-2g-304e. Experience Review Committee.

(1) The board may appoint a committee to review the experience claimed by applicants for licensure or certification.

(2) The committee shall:

(a) review each application for completion of the experience hours required for licensure or certification;

(b) correspond with applicants concerning submissions, if necessary; and

(c) make recommendations to the division and the board for licensure or certification approval or disapproval.

(3) The committee shall be composed of appraisers selected from among the following categories:

(a) residential appraisers;

(b) commercial appraisers;

(c) farm and ranch appraisers;

(d) right-of-way appraisers; and

(e) mass appraisers.

(4) The chairperson of the committee shall be appointed by the board.

(5) Meetings may be called upon:

(a) the request of the chairperson; or

(b) the written request of a quorum of committee members.

(6) If the board denies the application on the recommendation of an experience review committee member, the applicant may, within thirty days after the denial, make a written request for board review of the applicant's experience, stating specific grounds upon which relief is requested. The board shall thereafter consider the request and issue a written decision.

R162-2g-304f. Final Application for Licensure or Certification.

(1) Within 90 days after successfully completing the exam for licensure or certification, the applicant shall return to the division:

(a) a report from the testing service indicating successful completion of the exam within 24 months of the date on which the applicant obtains authorization to sit for the exam;

(b) an application form as required by the division and including:

(i) the applicant's business, home, and e-mail addresses;

(ii) the name and business address of any appraisal entity or government agency with which the applicant is affiliated; and

(iii) if the applicant is applying for certification, the fee for the federal registry.

(2)(a) A post office box without a street address is unacceptable as a business or home address.

(b) An applicant may designate any address to be used as a mailing address.

R162-2g-306a. Renewal and Reinstatement of a Registration, License, or Certification.

(1)(a) A registration, license, or certification is valid for two years and expires unless it is renewed according to this Subsection R162-2g-306a before the expiration date printed on the registration, license, or certificate.

(b) It shall be grounds for disciplinary sanction if, after an individual's registration, license, or certification has expired, the individual continues to perform work for which the individual is

required to be registered, licensed, or certified.

(2) To timely renew a registration, license, or certification, an applicant shall, prior to the expiration date of the registration, license, or certification, submit to the division:

(a) a completed renewal application as provided by the division;

(b) proof of completion of the following continuing education taken during the preceding two years:

(i)(A) the 7-hour National USPAP Update Course, taught by an instructor or instructors, at least one of whom is a state-certified residential or state-certified general appraiser and has been certified by the AQB; or

(B) equivalent education, as determined through the course approval program of the AQB; and

(ii)(A) 21 additional hours of continuing education:

(I) certified by the division for the appraisal industry at the time the courses are taught; or

(II) not required to be certified, pursuant to Subsection R162-2g-307c(3); or

(B) if the renewal applicant is also working toward certification, 21 hours of pre-licensing education credit applicable to the certification being sought; and

(c) the applicable nonrefundable renewal fee.

(3)(a) In order to renew on time, an applicant shall complete continuing education hours by the 15th day of the month in which the registration, license, or certification expires.

(b) An applicant who complies with this Subsection (3)(a), but whose credits are not banked by the education provider pursuant to Subsection R162-2g-502a(5)(c), may obtain credit for the course(s) taken by:

(i) submitting to the division the original course completion certificates; and

(ii) filing a complaint against the provider.

(4) A license, certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of this Subsection (2).

(5)(a) After the 30-day period described in this Subsection (4) and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in this Subsection (5)(a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee;

(iii) paying a reinstatement fee; and

(iv) completing 24 hours of additional continuing education as approved by the division.

(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date shall:

(A) reapply with the division as a new applicant;

(B) retake and pass the 15-hour USPAP course; and

(C) retake and pass any applicable licensing or certification examination.

(ii) An individual reapplying under this Subsection (4)(c)(i) shall receive credit for previously credited pre-licensing education if:

(A) it was completed within the five-year period prior to the date of reapplication; and

(B) it was either:

(I) completed after January 1, 2008; or

(II) certified by the division and the AQB prior to January 1, 2008, as approved, qualified pre-licensing education.

(6) If the division receives renewal documents in a timely

manner, but the information is incomplete, the appraiser or trainee may be extended a 15-day grace period to complete the application.

(7) Renewal while on active military service.

(a) An appraiser or trainee who is unable to renew a registration, license, or certification because active military service has prevented the completion of the appraiser's or trainee's required continuing education may:

(i) submit a timely application for renewal that is complete, except for proof of continuing education; and

(ii) request that the application for renewal be held in suspense pending the completion of the continuing education requirement.

(b) The appraiser or trainee shall have 120 days after completion of active military service to complete the continuing education required for the renewal and submit proof of the continuing education to the division.

(c) An individual may not act as an appraiser or trainee in Utah:

(i) after the expiration of the registration, license, or certification; or

(ii) while the individual's application for renewal is held in suspense by the division pending the completion of military service and the completion of the continuing education required for renewal.

R162-2g-306b. Notification of Changes.

(1) An individual registered, licensed, or certified under these rules shall notify the division of any status change, including the following:

(a) creation or termination of an affiliation, except as provided in this Subsection (2);

(b) change of name; and

(c) change of business, home, mailing, or e-mail address.

(2) An individual is not required to report the creation or termination of an affiliation that:

(a) facilitates a single transaction; and

(b) is not part of an ongoing business association.

(3) Notification procedure.

(a) To report a change of name, an individual shall complete a paper change form and attach to it official documentation such as a:

(i) marriage certificate;

(ii) divorce decree; or

(iii) driver license.

(b)(i) To report a change in affiliation or address, and individual shall complete and submit an electronic change form through RELMS.

(ii) A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

(c) All change forms shall be accompanied by a nonrefundable processing fee.

(4) Deadlines and effective dates.

(a)(i) An individual shall comply with the notification requirements outlined in this Subsection R162-2g-306b within ten business days of making a status change.

(ii) If a deadline for notification falls on a day when the division is closed, the deadline shall be extended to the next business day.

(b) Status changes are effective on the date the properly executed forms and appropriate fees are received by the division.

R162-2g-307a. School Certification.

(1) Application. A school requesting certification shall:

(a) submit an application form as prescribed by the division, including:

(i) name, telephone number, email address, and address

of:

- (A) the school;
- (B) the school director; and
- (C) all owners of the school; and
- (ii) as to each school director or owner, disclosure of criminal history and adverse regulatory actions;
- (b) provide a description of:
 - (i) the type of school; and
 - (ii) the school's physical facilities;
- (c) provide a statement outlining the:
 - (i) number of quizzes and examinations in each course offered;
 - (ii) grading system, including methods of testing and standards of grading;
 - (iii) requirements for attendance; and
 - (iv) school's refund policy.
- (2) Standards for operation.
 - (a) All courses shall be taught in an appropriate classroom facility and not in a private residence, except for a course approved for distance education.
 - (b) A school shall teach the approved course of study as outlined in the state-approved outline.
 - (c) At the time of registration, a school shall provide to each student:
 - (i) the statement described in this Subsection (1)(c);
 - (ii) a copy of the qualifying questionnaire that the student will be required by the division to answer as part of the pre-licensing or precertification examination; and
 - (iii) a criminal history disclosure statement.
 - (d) A school shall require each student to attend 100% of the scheduled class time in order to earn credit for the course.
 - (e)(i) A school may not award credit to any student who fails the final examination.
 - (ii) A student who fails a school final examination must wait three days before retesting and may not retake the same final examination.
 - (iii) A student who fails a final examination a second time must wait two weeks before retesting and may not retake either exam that the student previously failed.
 - (iv) A student who fails a final exam a third time shall fail the course.
- (f) A school may not allow a student to challenge a course or any part of a course by taking an exam in lieu of attendance.
- (g) Credit hours.
 - (i) For a course that is taught outside of a college or university setting, one credit hour may be awarded for 50 minutes of instruction within a 60-minute period, allowing for a ten-minute break.
 - (ii) For a course that is taught in a college or university setting:
 - (A) one quarter hour is equivalent to 10 credit hours; and
 - (B) one semester hour is equivalent to 15 credit hours.
 - (iii) A school may not award more than eight credit hours per day per student.
- (3) A school shall report to the division within 10 calendar days of:
 - (a) any change in the information provided pursuant to this Subsection (1)(a)(i); and
 - (b) a school director or owner being convicted, or entering a plea in abeyance or diversion agreement, as to a criminal offense, excluding class C misdemeanors.
- (4)(a) A school certification is valid for two years from the date of issuance.
 - (b) To renew a school certification, an individual shall, prior to the date of expiration:
 - (i) submit a properly completed application as provided by the division; and
 - (ii) pay a nonrefundable applicable fee.

R162-2g-307b. Pre-licensing Course Certification.

- (1) To certify a pre-licensing course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:
 - (a) a course outline, including:
 - (i) a description of the course;
 - (ii) the length of time to be spent on each subject area, broken into segments of no more than 30 minutes each; and
 - (iii) three to five learning objectives for every three hours;
 - (b) a description of any method of instruction that will be used other than lecture method, including:
 - (i) webinar;
 - (ii) satellite broadcast; or
 - (iii) other form of distance education;
 - (c) copies of at least three final examinations administered in the course and the answer keys that will be used to determine if a student passes the course;
 - (d) the school procedure for maintaining the security of the final exams and answer keys;
 - (e) the titles, authors, and publishers of all required textbooks;
 - (f)(i) the instructor(s) who will teach each class; and
 - (ii) evidence that each instructor is:
 - (A) certified by the division;
 - (B) qualified to serve as a guest lecturer; or
 - (C) a college or university faculty member who has academic training or appraisal experience satisfactory to the division and the board;
 - (g) a nonrefundable applicable fee; and
 - (h) a signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:
 - (i) course name;
 - (ii) course certificate number assigned by the division;
 - (iii) date the course was taught;
 - (iv) number of credit hours; and
 - (v) name and license number of each student receiving education credit.
- (2) Standards for approval of traditional classroom courses. Each course shall:
 - (a) meet the minimum standards set forth in the state-approved course outline governing the course, including minimum hourly requirements;
 - (b) be approved through the AQB course approval program;
 - (c) allow a maximum of 10% of the required class time for testing, including review test and final examination;
 - (d) use texts, workbooks, supplement pamphlets, and other materials that are appropriate and current in their application to the required course outline.
- (3) Standards for approval of distance education
 - (a) A distance education course shall:
 - (i) comply with this Subsection (2);
 - (ii) provide interaction between the student and instructor;
 - (iii) include a written examination personally proctored by an official approved by the presenting entity;
 - (iv) meet the course delivery requirements established by the AQB and the International Distance Education Certification Center; and
 - (v) offer at least 15 credit hours.
 - (b) A distance education course offered by a college or university may be deemed acceptable to meet the credit hour requirement if the course content is approved by:
 - (i) the AQB;
 - (ii) a state licensing jurisdiction; or
 - (iii) a college or university that:
 - (A) offers distance education programs in other disciplines; and
 - (B) is approved or accredited by:

(I) the Commission on Colleges;
 (II) a regional or national accreditation association; or
 (III) an accrediting agency that is recognized by the United States Secretary of Education.

(4) Within 10 business days after the occurrence of any material change in a course that could affect approval, the school shall give the division written notice of the change.

(5) A course certification is valid for no more than 24 months.

(6) Credit for non-certified pre-licensing education.

(a) Division certification is not required for a pre-licensing course that is offered by a school, as defined in Subsection R162-2g-102(17) as long as:

(i) the course content:

(A) meets the minimum standards set forth in the Utah state-approved course outline; and

(B) is approved by the AQB course approval program;

(ii) the course provides at least 15 credit hours, including examination(s);

(iii) a closed-book, closed-note final examination is administered at the end of each course;

(iv) students are not allowed to earn credit from the course provider by challenge examination without first attending the course;

(v) credit is not awarded for duplicate or highly comparable classes;

(vi) where multiple classes are offered, they represent a progression in a student's knowledge; and

(vii) in order to receive credit, a student is required to:

(A) attend 100% of the scheduled class hours;

(B) complete all required exercises and assignments; and

(C) pass the course final examination.

(b) Hourly credit for a course taken from a professional appraisal organization shall be granted according to the division approved list.

(c) An applicant who wishes to be awarded credit for non-certified pre-licensing education shall:

(i) provide to the division a list of the cours(es) taken, including:

(A) course title(s);

(B) name(s) of the sponsoring organization(s);

(C) number of classroom hours completed;

(D) date(s) of course completion; and

(E) evidence that the cours(es) meet the requirements of:

(I) the AQB; and

(II) if distance education, the International Distance Education Certification Center;

(ii) request review of the course by the division and board;

(iii) establish that the criteria outlined in this Subsection (6)(a) are met;

(iv) attest on a notarized affidavit that the courses have been completed as documented; and

(v) if requested by the division, provide proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

R162-2g-307c. Continuing Education Course Certification.

(1) The division and the board may not award continuing education credit for a course that is taught in Utah to registered, licensed, or certified appraisers unless the course is certified prior to its being taught.

(2) To certify a continuing education course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) name and contact information of the course sponsor and the entity through which the course will be provided;

(b) description of the physical facility where the course will be taught;

(c) the proposed number of credit hours for the course;

(d) identification of whether the method of instruction will be traditional education or distance education;

(e) title of the course;

(f) statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) course outline including:

(i) a description of the subject matter covered in each 15-minute segment; and

(ii) a minimum of one learning objective for every hour of class time;

(h) the name and certification number of each certified instructor who will teach the course;

(i) copies of all materials that will be distributed to the participants;

(j) the procedure for pre-registration;

(k) the tuition or registration fee and a copy of the cancellation and refund policy;

(l) except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time;

(m) sample of the completion certificate;

(n) signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) names and license numbers of all students receiving continuing education credit;

(o) signed statement agreeing not to market personal sales products; and

(p) other information the division might require.

(2) Standards for approval.

(a)(i) A distance education course shall:

(A) provide interaction between the student and instructor; and

(B) include a written examination that requires a student to demonstrate mastery and fluency.

(ii) The division may approve a distance education course offered by a college or university if the college or university:

(A) offers distance education programs in other disciplines; and

(B)(I) is accredited by the Commission on Colleges or a regional accreditation association; or

(II) is approved by the International Distance Education Certification Center.

(b) The course topic must be AQB-approved.

(c) The procedure for taking and maintaining control of attendance shall be more extensive than having the students sign a class roll.

(d) The completion certificate shall allow for entry of:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(viii) course certification number and expiration date;

(ix) credit hours awarded; and

(x) signatures of the course sponsor and the licensee.

(e) A real estate appraisal-related field trip that is submitted for continuing education credit may not include transit time to or from the field trip location as part of the credit hours awarded.

(4) Non-certified continuing education credit. Except as provided in Subsection R162-2f-307c(1), the board may award

continuing education credit on a case-by-case basis for the following:

- (a) participation, other than as a student, in an appraisal practicum course;
- (b) teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education, up to one-half of an individual's continuing education credit requirement;
- (c) service as a member of the experience review committee, or the technical advisory panel, if approved by the board and offered in accordance with AQB standards as a:
 - (i) practicum course under this Subsection (3)(a); or
 - (ii) course under this Subsection (3)(b); and
- (d) completion of any course that:
 - (i) meets the continuing education objectives of increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; and
 - (ii) is taught outside the state of Utah.

R162-2g-307d. Instructor Certification for Pre-licensing Education.

(1) To certify as a pre-licensing education instructor, an individual shall:

- (a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);
- (b) submit a completed application as provided by the division;
- (c) demonstrate knowledge of the subject matter to be taught as evidenced by:
 - (i) a minimum of five years active experience in appraising;
 - (ii) college or other appropriate courses specific to the topic proposed to be taught; or
 - (iii) other experience, education, or credentials acceptable to the board;
- (d) if the individual proposes to teach a course in USPAP, evidence that the individual is an AQB-certified USPAP instructor; and
- (e) pay a nonrefundable application fee.

(2) A pre-licensing instructor certification is valid for 24 months from the date of issuance.

(3) To renew a pre-licensing instructor certification, an individual shall:

- (a) submit a completed application, as provided by the division;
- (b) evidence having taught at least 20 hours of in-class instruction in certified course(s) during the preceding term of certification;
- (c) evidence having attended a real estate instructor development workshop sponsored or approved by the division during the preceding two years; and
- (d) pay a nonrefundable application fee.

(4)(a) To reinstate an expired pre-licensing instructor certification within 30 days following the expiration date, an individual shall:

- (i) comply with this Subsection (3); and
- (ii) pay a nonrefundable late fee.
- (b) To reinstate an expired pre-licensing instructor certification after 30 days and within six months following the expiration date, an individual shall:
 - (i) comply with this Subsection (3);
 - (ii) pay a nonrefundable reinstatement fee; and
 - (iii) submit proof of having completed six classroom hours of education related to real estate appraisal or teaching techniques.

(c) After a pre-licensing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

(5) A certified instructor shall comply with the reporting requirements of Section 61-2g-306(3).

R162-2g-307e. Instructor Certification for Continuing Education.

(1) A continuing education course that is required to be certified shall be taught by a certified instructor.

(2) To obtain a continuing education instructor certification, an individual shall, at least 30 days prior to the date on which instruction is proposed to begin:

- (a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);
- (b) submit a completed application form, as provided by the division;
- (c) evidence:
 - (i) at least three years of full-time experience in the course subject;
 - (ii) college-level education related to the course subject;

or

- (iii) a combination of experience and education acceptable to the division;

- (d) evidence:
 - (i) at least 12 months of full-time teaching experience;
 - (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
 - (iii) attendance at the division's Instructor Development Workshop;

(e) provide a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

- (f) provide a signed statement agreeing not to market personal sales products;
- (g) provide any other information the division requires; and

(h) pay a nonrefundable application fee.

(3) A continuing education instructor certification is valid for two years.

(4) To renew a continuing education instructor certification, an individual shall, prior to the date of expiration:

- (a) submit a completed renewal application, as provided by the division;
- (b)(i) evidence having taught a minimum of 12 continuing education credit hours during the past term of certification; or
- (ii) provide a written explanation outlining the reason for not meeting the requirement having taught 12 continuing education credit hours and provide evidence satisfactory to the division that the applicant maintains an appropriate level of expertise; and
- (c) pay a nonrefundable renewal fee.

(5)(a) To reinstate an expired continuing instructor certification within 30 days following the expiration date, an individual shall:

- (i) comply with Subsection (4); and
- (ii) pay a nonrefundable late fee.
- (b) To reinstate an expired continuing instructor certification after 30 days and within six months following the expiration date, an individual shall:
 - (i) comply with Subsection (4); and
 - (ii) pay a nonrefundable reinstatement fee;
 - (c) After a continuing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

R162-2g-308. Application for a Six-Month Temporary Permit.

(1) A non-resident of this state who is licensed or certified in another state and who wishes to apply for a six-month temporary permit to perform one or more specific appraisal

assignments in Utah shall:

- (a) evidence that each specific appraisal assignment is covered by a contract to provide appraisals;
 - (b) submit an application as provided by the division and including the following:
 - (i) name of the client;
 - (ii) specific property address(es) to be appraised;
 - (iii) type(s) of property being appraised; and
 - (iv) estimated time to complete each assignment;
 - (c) complete and submit a qualifying questionnaire as provided by the division;
 - (d) sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any non-criminal proceeding arising out of the applicant's practice as an appraiser in this state;
 - (e) pay a nonrefundable application fee in the amount established by the division; and
 - (f) provide the starting date of the appraisal assignment for which the temporary permit is being sought.
- (2)(a) A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six-month period if the assignment(s) for which the permit is issued have not been completed within the original six-month term of the temporary permit.
- (b) A temporary permit may be extended by submitting the forms required by the division.

R162-2g-310. Application for Licensure or Certification Through Reciprocity.

An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

- (1) The applicant shall provide evidence that:
 - (a) the state in which the applicant is licensed requires appraisal pre-licensing education that is:
 - (i) approved by that state; and
 - (ii) substantially equivalent in number to the hours required for the license or certification for which the applicant is applying in Utah;
 - (b) the applicant's pre-licensing education included either:
 - (i) the 15-hour National USPAP Course; or
 - (ii) equivalent education as determined through the course approval program of the AQB; and
 - (c) the applicant has passed an examination that has been approved by the AQB for the license or certification for which the applicant is applying.
- (2) The applicant shall:
 - (a) obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder; and
 - (b) sign an attestation that the applicant understands and will abide by both the statute and the rules.
- (3) If the applicant resides outside of the state of Utah, the applicant shall sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any noncriminal proceeding arising out of the applicant's practice as an appraiser in this state.
- (4) The board may not issue a license or certification to an applicant who has been convicted of a criminal offense involving moral turpitude relating to the applicant's ability to provide services as an appraiser.

R162-2g-311. Scope of Authority.

- (1) Trainees.
 - (a) An individual who has properly qualified as a trainee as pursuant to Subsection R162-2g-302 may perform the following appraisal-related duties:
 - (i) participating in property inspections;
 - (ii) measuring or assisting in the measurement of

properties;

- (iii) performing appraisal-related calculations;
 - (iv) participating in the selection of comparables for an appraisal assignment;
 - (v) making adjustments to comparables; and
 - (vi) drafting or assisting in the drafting of an appraisal report.
- (b) The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of the activities identified in this Subsection (1)(a), within the following limitations:
- (i) As to the trainee's first 100 inspections of residential properties:
 - (A) the trainee shall be accompanied and supervised by a state-certified appraiser;
 - (B) both the interior and the exterior of the properties shall be inspected; and
 - (C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).
 - (ii) As to the trainee's first 20 inspections of non-residential properties:
 - (A) the trainee shall be accompanied and supervised by a state-certified general appraiser;
 - (B) both the interior and the exterior of the properties shall be inspected; and
 - (C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).
 - (c) A trainee may not:
 - (i) solicit or accept an assignment on behalf of anyone other than:
 - (A) the trainee's supervisor; or
 - (B) the supervisor's appraisal firm;
 - (ii) sign an appraisal report or discuss an appraisal assignment with anyone other than:
 - (A) the appraiser responsible for the assignment;
 - (B) state enforcement agencies;
 - (C) third parties as may be authorized by due process of law; and
 - (D) a duly authorized professional peer review committee.
 - (d) The following are not subject to the scope of authority limitations of this Subsection (1):
 - (i) full-time elected county assessors; and
 - (ii) any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll.
 - (2) State-licensed appraisers. In a federally-related transaction, state-licensed appraisers may appraise:
 - (a) non-complex one- to four-residential units having a transaction value of less than \$1,000,000;
 - (b) complex one- to four- residential units having a transaction value of less than \$250,000; and
 - (c) vacant or unimproved land that is utilized for one- to four-family purposes, or for which the highest and best use is one- to four-family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.
 - (3) State-licensed appraisers and state-certified residential appraisers may not perform appraisals of the following:
 - (a) subdivisions for which:
 - (i) a development analysis/appraisal is necessary; or
 - (ii) a discounted cash flow analysis is required by the terms of the assignment; and
 - (b) vacant land if the highest and best use of the land is for five or more one- to four-family units.
- R162-2g-502a. Standards of Conduct and Practice.**
- (1) Affirmative duties in general. A person registered, licensed, or certified by the division shall:
 - (a) if employing an unlicensed assistant who is not

registered as a trainee pursuant to Subsection R162-2g-302:

- (i) actively supervise the unlicensed assistant; and
- (ii) ensure that the assistant performs only clerical duties, including:

(A) typing research notes or reports completed by a trainee or an appraiser;

(B) taking photographs of properties; and

(C) obtaining copies of public records;

(b)(i) except as provided in this Subsection (2)(a), comply with the current edition of USPAP; and

(ii) observe the advisory opinions of USPAP;

(c) in order to authorize another individual to sign an appraisal report on behalf of the individual who completes the report:

(i) grant authority to the signer in writing;

(ii) limit the signing authority to a specific property address;

(iii) explicitly disclose within the appraisal report that the signer is authorized by the appraiser to sign the report on the appraiser's behalf;

(iv) attach a copy of the written permission required pursuant to this Subsection (1)(c)(i) to the report; and

(v) ensure that the signer signs the appraiser's name, followed by the word "by," and then followed by the signer's own name;

(d) if using a digital signature in place of a handwritten signature, ensure that:

(i) the software program that generates the digital signature has a security feature; and

(ii) no one other than the appraiser has control of the signature;

(e) retain a photocopy or other exact copy of each report as it is provided to the client, including the appraiser's signature;

(f) analyze and report the sales and listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), property owner, or other verifiable source(s);

(g)(i) include in each appraisal report a statement indicating whether or not the subject property was inspected as part of the appraisal process; and

(ii) if any inspections were done, include the following information concerning each inspection:

(A) the names of all appraisers and trainees who participated in the inspection;

(B) whether the inspection was an exterior inspection only or both an exterior and an interior inspection; and

(C) the date that the inspection was performed; and

(h) unless Subsection (2)(b) applies, respond within ten business days to division notification:

(i) of a complaint against the individual; or

(ii) that information is needed from the individual.

(2) Exceptions.

(a) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:

(i) a division staff member or employee;

(ii) a member of the experience review committee as appointed and approved by the board;

(iii) a member of the technical review panel as appointed and approved by the board;

(iv) a hearing officer;

(v) a member of a county board of equalization;

(vi) an administrative law judge;

(vii) a member of the Utah State Tax Commission; or

(viii) a member of the board.

(b) If a deadline for response under this Subsection (1)(h) falls on a day when the division is closed, the deadline shall be extended to the next business day.

(3) A trainee shall:

(a) using forms provided by the division, maintain a separate log of experience hours for each supervising appraiser with whom the trainee works; and

(b) include in each log the following information for each appraisal:

(i) file number;

(ii) report date;

(iii) subject address;

(iv) client name;

(v) type of property;

(vi) report form number or type;

(vii) number of work hours;

(viii) description of work performed by the trainee; and

(ix) scope of the review and supervision of the supervising appraiser.

(4) A supervising appraiser shall:

(a) delegate to a trainee only such duties as the trainee is authorized to perform under Subsection R162-2g-311(1);

(b) directly train and supervise the trainee in the performance of assigned duties by:

(i) critically observing and directing all aspects of the appraisal process; and

(ii) accepting full responsibility for the appraisal and the contents of the appraisal report;

(c) personally inspect:

(i) each property that is appraised with a trainee until the trainee has performed:

(A) 100 residential inspections as provided in Subsection R162-2g-311(1)(b)(i); and

(B) 20 non-residential inspections as provided in Subsection R162-2g-311(1)(b)(ii); and

(ii) any property for which the appraisal report scope of work or certification requires appraiser inspection.

(5) A school shall:

(a) maintain a record of each student's attendance for a minimum of five years after the student enrolls;

(b) display the certification number of all continuing education courses in advertising and marketing;

(c) as to each student who provides the school with an accurate name or license number, bank course completion information:

(i) within 10 days after the end of a course offering; and

(ii) to the database specified by the division;

(d) upon request of the division, substantiate any claim made in advertising or marketing;

(e) within 15 calendar days of any material change in the information outlined in R162-2g-307a(1), provide to the division written notice of the change;

(f) with regard to the criminal history disclosure required under R162-2g-307a(2)(c)(iii):

(i) obtain each student's signature before allowing the student to participate in course instruction;

(ii) retain each signed criminal history disclosure for a minimum of two years; and

(iii) make any signed criminal history disclosure available to the division upon request;

(g) maintain a high quality of instruction;

(h) adhere to all state laws and administrative rules regarding school and instructor certification;

(i) provide the instructor(s) for each course with the required course content outline;

(j) require instructors to adhere to the approved course content;

(k) comply with a division request for information within 10 business days of the date of the request; and

(l) verify that the material is current in any course taught on:

(i) Utah statutes;

(ii) Utah administrative rules;

- (iii) Federal laws; and
- (iv) Federal regulations.

(6) An instructor shall adhere to the approved outline for any course taught.

R162-2g-502b. Prohibited Conduct.

(1) An individual registered, licensed, or certified by the division may not:

(a) release to a client a draft report of a one- to four-unit residential real property;

(b) release to a client a draft report of a property other than a one- to four-unit residential real property unless:

(i) the first page of the report prominently identifies the report as a draft;

(ii) the draft report is signed by the appraiser; and

(iii) the appraiser complies with USPAP in the preparation of the draft report;

(c) affix a signature to an appraisal report by means of a signature stamp; or

(d) sign a blank or partially completed appraisal report that will be completed by anyone other than the appraiser who has signed the report;

(e) sign an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property; or

(f) split appraisal fees with any person who is not a state-licensed or state-certified appraiser, except that a supervising appraiser may pay a trainee reasonable compensation proportionate to the lawful services actually performed by the trainee in connection with appraisals.

(2) A trainee may not:

(a) solicit a client to address an engagement letter directly to the trainee; or

(b) accept payment for appraisal services from anyone other than:

(i) the trainee's supervisor; or

(ii) an appraisal or government entity with which the trainee is affiliated.

(3) A supervising appraiser may not:

(a) sign a report that is completed in response to an engagement letter that is addressed to a trainee;

(b) supervise more than three trainees at one time; or

(c) sign an appraisal report as the supervising appraiser without having given adequate supervision to the trainee, appraiser, or assistant being supervised.

(4) A state-licensed appraiser may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

(5) A school may not:

(a) in advertising and marketing:

(i) make a misrepresentation about any course of instruction;

(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession;

(iii) disparage a competitor's services or methods of operation;

(iv) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;

(b) attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank;

(c) accept payment from a student without first providing to that student the information outlined in R162-2g-307a(2)(c);

(d) continue to operate after the expiration date of the school certification without renewing;

(e) continue to offer a course after its expiration date without renewing;

(f) allow an instructor whose instructor certification has

expired to continue teaching;

(g) allow an individual student to earn more than eight credit hours of education in a single day;

(h) award credit to a student who has not complied with the minimum attendance requirements;

(i) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(j) give valuable consideration to a person licensed with or certified by the division under Section 61-2g for referring students to the school;

(k) accept valuable consideration from a person licensed with or certified by the division under Section 61-2g for referring students to a licensed or certified appraiser; or

(l) require a student to attend any program organized for the purpose of solicitation.

(6) An instructor may not:

(a) continue to teach any course after the course has expired and without renewing the course certification; or

(b) continue to teach any course after the individual's certification has expired and without renewing the instructor certification.

R162-2g-504. Administrative Proceedings.

(1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order shall be conducted as a formal adjudicative proceeding.

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Appraiser Licensing and Certification Act or by these rules.

(3)(a) A hearing before the board will be held in:

(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2g-501 and 502 against a trainee or an appraiser; and

(iv) an appeal from an automatic revocation under Section 61-2g-302(2)(d), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application:

(i) that is denied by the division on the grounds that the instructor's attestation to upstanding moral character is false;

(ii) for an initial appraiser license or certification that is denied by the board on the recommendation of the experience review committee; and

(iii) for a temporary permit that is denied by the division for any reason.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of a trainee registration or an appraiser license or certification by the division;

(ii) the issuance or renewal of an appraisal course, school, or instructor certification;

(iii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and

(iv) the denial of renewal or reinstatement of a trainee

registration or an appraiser license or certification for failure to complete any continuing education required by statute or rule; and

(v) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules.

(4)(a) Request for agency action. The following applications shall be deemed a request for agency action:

- (i) registration as a trainee;
- (ii) licensure or certification as an appraiser;
- (iii) certification of a course, school, or instructor; and
- (iv) issuance of a temporary permit.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

- (i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;
- (ii) the agency's file number or other reference number, if known;
- (iii) the date of mailing of the request for agency action;
- (iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;
- (v) a statement of the relief or action sought from the division; and
- (vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against a trainee, an appraiser, or the holder of a temporary permit requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(5) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

- (i) Utah Administrative Procedures Act Title 63G, Chapter 4;
- (ii) Utah Administrative Code Rule R151-4 et seq.; and
- (iii) the rules promulgated by the division.

(b) Except as provided in this Subsection (6)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2g-504, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division pursuant to Subsection R162-2g-306b.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

- (i) on its own behalf; or
- (ii) on behalf of a party where the party:
 - (A) makes a written request;
 - (B) assumes responsibility for effecting service of the subpoena; and
 - (C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(g) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(h) Intervention is prohibited.

(i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

- (i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or
- (ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(6) Additional procedures for disciplinary proceedings. (a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

- (i) a notice of agency action;
- (ii) a petition setting forth the allegations made by the division;
- (iii) a witness list, if applicable; and
- (iv) an exhibit list, if applicable.

(b) Answer. (i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (6)(a).

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.

(ii) Any witness list shall contain:

- (A) the name, address, and telephone number of each witness; and
- (B) a summary of the testimony expected from the witness.

(iii) Any exhibit list:

- (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
- (B) shall be accompanied by copies of the exhibits.

(iv)(A) The presiding officer, upon a determination of good cause, may require a respondent to file a witness and exhibit list.

(B) Failure to comply with a requirement to file a witness and exhibit list may result in the exclusion of any witness or exhibit not disclosed.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2g-601. Appendices.

Appendix 1. Residential Experience Hours Schedule. The hours shown in the following schedule shall be awarded to form appraisals. Fifteen hours may be added to the hours shown if the appraisal is a narrative appraisal instead of a form appraisal.

TABLE 1
APPENDIX 1

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade:	
(i) living area less than 4,000 square feet, including a site	5 hours
(ii) living area 4,000 square feet or more, including a site	7.5 hours
(b) multiple one-unit dwellings in	

the same subdivision or condominium project, which dwellings are substantially similar:

- (i) 1-25 dwellings
5 hours per dwelling, up to a maximum of 30 hours
- (ii) over 25 dwellings
50 hours maximum
- (c) two to four-unit dwelling
20 hours
- (d) employee relocation counsel reports completed on currently accepted Employee Relocation Counsel form
10 hours
- (e) residential lot, 1-4 unit
5 hours
- (f) multiple lots in the same subdivision, which lots are substantially similar
- (i) 1-25 lots
5 hours per lot, up to a maximum of 30 hours
- (ii) Over 25 lots
50 hours maximum
- (g) small parcel up to 5 acres
5 hours
- (h) vacant land, 20-500 acres
20-40 hours, per board decision
- (i) recreational, farm, or timber acreage suitable for a house site:
(i) up to 10 acres
10 hours
(ii) over 10 acres
15 hours
- (j) all other unusual structures or acreage which are much larger or more complex than typical properties
5-35 hours, per board decision
- (k) review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies
10-50 hours

- (i) all other unusual structures or assignments that are much larger or more complex than the properties described in (a) to (h) herein.
5 to 100 hours per board decision
- (j) entire subdivisions or planned unit developments (PUDs):
(i) 1- to 25-unit subdivision or PUD
30 hours
(ii) over 25-unit subdivision or PUD
50 hours
- (k) feasibility or market analysis
5 to 100 hours, each per board decision, up to a maximum of 500 hours
- (l) farm and ranch appraisals:
(i) separate grazing privileges or permits
Form Narrative
(ii) irrigated cropland, pasture
20 hrs 25 hrs
- other than rangeland:
(A) 1 to 10 acres
10 hrs 15 hrs
(B) 11-50 acres
12.5 hrs 20 hrs
(C) 51-200 acres
15 hrs 25 hrs
(D) 201-1000 acres
25 hrs 40 hrs
(E) more than 1000 acres
40 hrs 50 hrs
- (iii) dry farm:
(A) 1 to 1000 acres
15 hrs 25 hrs
(B) more than 1000 acres
20 hrs 40 hrs
- (m) Improvements on properties other than a rural residence, maximum 10 hours:
(i) dwelling
5 hrs 5 hrs
(ii) shed
2.5 hrs 2.5 hrs
- (n) cattle ranches
(i) 0-200 head
15 hrs 20 hrs
(ii) 201-500 head
25 hrs 30 hrs
(iii) 501-1000 head
30 hrs 40 hrs
(iv) more than 1000 head
40 hrs 50 hrs
- (o) sheep ranches
(i) 0-2000 head
25 hrs 30 hrs
(ii) more than 2000 head
35 hrs 45 hrs
- (p) dairy, including all improvements except a dwelling
(i) 1-100 head
20 hrs 25 hrs
(ii) 101-300 head
25 hrs 30 hrs
(iii) more than 300 head
30 hrs 35 hrs
- (q) orchards
(i) 5-50 acres
30 hrs 40 hrs
(ii) more than 50 acres
40 hrs 50 hrs
- (r) rangeland/timber
(i) 0-640 acres
20 hrs 25 hrs
(ii) more than 640 acres
30 hrs 35 hrs
- (s) poultry
(i) 0-100,000 birds
30 hrs 40 hrs
(ii) more than 100,000 birds
40 hrs 50 hrs
- (t) mink
(i) 0-5000 cages
30 hrs 35 hrs
(ii) more than 5000 cages
40 hrs 50 hrs
- (u) fish farm
40 hrs 50 hrs
- (v) hog farm
40 hrs 50 hrs
- (w) review of appendix 2 appraisals with no opinion of value developed as part of the review, performed in conjunction with investigations by government agencies
20-100 hours

Appendix 2. General Experience Hours Schedule. All appraisal reports claimed for property types identified in sections (a) through (k) of the following schedule shall be narrative appraisal reports. Experience hours listed in this schedule may be increased by 50% for unique and complex properties if the applicant notes the number of extra hours claimed on the appraiser experience log submitted by the applicant, and if the applicant maintains in the workfile for the appraisal an explanation as to why the extra hours are claimed.

TABLE 2
APPENDIX 2

Property Type	Hours that may be earned
(a) Apartment buildings: (i) 5-100 units (ii) over 100 units	40 hours 50 hours
(b) hotel or motels: (i) 50 units or fewer (ii) 51-150 units (iii) over 150 units	30 hours 40 hours 50 hours
(c) nursing home, rest home, care facilities: (i) fewer than 80 beds (ii) over 80 beds	40 hours 50 hours
(d) industrial or warehouse building: (i) smaller than 20,000 square feet (ii) larger than 20,000 square feet, single tenant (iii) larger than 20,000 square feet, multiple tenants	30 hours 40 hours 50 hours
(e) office buildings: (i) smaller than 10,000 square feet (ii) larger than 10,000 square feet, single tenant (iii) larger than 10,000 square feet, multiple tenants	30 hours 40 hours 50 hours
(f) entire condominium projects, using income approach to value: (i) 5- to 30-unit project (ii) 31- or more-unit project	30 hours 50 hours
(g) retail buildings: (i) smaller than 10,000 square feet (ii) larger than 10,000 square feet, single tenant (iii) larger than 10,000 square feet, multiple tenants	30 hours 40 hours 50 hours
(h) commercial, multi-unit, industrial, or other nonresidential use acreage: (i) 1 to 99 acres (ii) 100 acres or more, income approach to value	20-40 hours 50-60 hours

Appendix 3. Mass Appraisal Experience Hours Schedule.

TABLE 3
APPENDIX 3

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade living area less than 4,000 square feet: (i) exterior inspection, highest and best use analysis, data collection only (ii) interior and exterior inspection, highest and best use analysis, data collection only (iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	0.5 hours 1 hour 3.75 hours
(b) one-unit dwelling, above-grade living area 4,000 square feet or more: (i) exterior inspection, highest and best use analysis, data collection only (ii) interior and exterior inspection, highest and best use analysis, data collection only (iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	0.75 hours 1.5 hours 5 hours

- (c) two to four unit dwelling:
 - (i) exterior inspection, highest and best use analysis, data collection only 1.5 hours
 - (ii) interior and exterior inspection, highest and best use analysis, data collection only 3 hours
 - (iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report 15 hours
- (d) commercial and industrial buildings, depending on complexity:
 - (i) exterior inspection, highest and best use analysis, data collection only 1-5 hours
 - (ii) interior and exterior inspection, highest and best use analysis, data collection only 2-10 hours
 - (iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report 3-37.5 hours
- (e) agricultural and other improvements, depending on complexity:
 - (i) exterior inspection, highest and best use analysis, data collection only 0.5-2.5 hours
 - (ii) interior and exterior inspection, highest and best use analysis, data collection only 1-5 hours
 - (iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report 3.75-20 hours
- (f) vacant land, depending on complexity:
 - (i) inspection, highest and best use analysis, data collection only 0.5-2.5 hours
 - (ii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report 2.5-25 hours
 - (iii) land segregation (division) analysis and processing, no field inspection 0.25 hours
 - (iv) land segregation (division) analysis and processing, field inspection 0.5 hours
- (g) data input and review for experience hours claimed under property types(a) through (f) 0.25 hours
- (h) land valuation guideline:
 - (i) 25 or fewer parcels 10 hours
 - (ii) 26 to 500 parcels 30 hours
 - (iii) over 500 parcels 25 additional hours for each 500 parcels, up to a maximum of 125 hours
- (i) assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation:
 - (i) base study of 100 reviewed sales 125 hours
 - (ii) additional increments of 100 sales 25 additional hours for each 100 additional sales, up to a maximum of 375 hours
- (j) multiple regression model, development and implementation:
 - (i) fewer than 5,000 parcels 100 hours
 - (ii) additional increments of 500 parcels 5 additional hours for each additional 500 parcels, up to a maximum of 375 hours
- (k) depreciation study and analysis 100 hours
- (l) reviews of "land value in use" in accordance with U.C.A. Section 59-2-505:
 - (i) office review only 0.25 hours
 - (ii) field review 0.5 hours
- (m) natural resource properties, depending on complexity:
 - (i) sand and gravel 7.5-20 hours per site
 - (ii) mine 7.5-110 hours
 - (iii) oil and gas 1.65-50 hours per site
- (n) pipelines and gas distribution properties, depending on complexity 10-40 hours
- (o) telephone and electric properties, depending on complexity 5-80 hours
- (p) airline and railroad properties, depending on complexity 10-80 hours
- (q) appraisal review/audit, depending on complexity 2.5-125 hours
- (r) capitalization rate study 80 hours

**KEY: real estate appraisals, school certification, instructor certification
August 21, 2013**

**61-2g-201(2)(h)
61-2g-202(1)
61-2g-205(5)(c)
61-2g-307(3)
61-2g-401(5)**

R277. Education, Administration.**R277-406. K-3 Reading Improvement Program and the State Reading Goal.****R277-406-1. Definitions.**

A. "Benchmark assessment" means an assessment given three times each year (beginning of the year, middle of the year, and end of the year) designed to give teachers information to plan appropriate instruction, evaluate the effects of that instruction, and to provide data about the extent to which students are prepared to be successful on the end of year Criterion Referenced Test.

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

C. "Grade level in reading" means that a student gains adequate meaning from independently reading texts designed for instruction at that grade level.

D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

E. "LEA plan" means the K-3 Reading Achievement Program Plan submitted by public school districts and public charter schools.

F. "Midpoint of school year" means January 31 of the school year.

G. "Program" means the K-3 Reading Improvement Program.

H. "Program money" means funds allocated to an LEA through the K-3 Reading Improvement Program.

I. "School plan" means the K-3 Reading Achievement Program Plan submitted by a school, including charter schools.

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

R277-406-2. 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-1-401(3) which allows the Board to make rules in accordance with its responsibilities, and by Section 53A-17a-150(14)(a) which directs the Board to develop rules for implementing the K-3 Reading Improvement Program.

B. The purpose of this rule is to outline the responsibilities of USOE and LEAs for implementation of Section 53A-17A-150, K-3 Reading Improvement Program, and Section 53A-1-606.5, State Reading Goal-Reading Achievement Plan.

R277-406-3. Board/USOE Responsibilities.

A. The USOE shall provide model Program plans.

B. The Board shall approve the Program plans submitted by LEAs pursuant to R277-406-4A.

C. The Board shall develop uniform standards for acceptable growth goals that an LEA adopts.

D. The USOE shall prepare and disseminate a Program report at the end of each school year from information submitted by LEAs.

E. The Board shall make a report to the Public Education Appropriations Subcommittee that includes information on:

- (1) student learning gains in reading for the past school year and the previous five years;
- (2) the percentage of third grade students reading on grade level in the past school year and the previous five years;
- (3) progress of schools and school districts in meeting the goals in their K-3 Reading Improvement Plan(s);
- (4) correlation between third grade students reading on grade level and results of third grade language arts scores on criterion-referenced test or computer adaptive test; and
- (5) may include recommendations on how to increase the percentage of third grade students that read on grade level.

R277-406-4. Responsibilities of LEAs.

A. To receive Program money, each elementary school or

school with K-3 grade levels shall submit a school plan to its local board or charter board, and each LEA shall submit an LEA plan to the Board for reading proficiency improvement that incorporates the following components:

- (1) assessment;
- (2) intervention strategies;
- (3) research-based best-practices;
- (4) professional development for classroom teachers in kindergarten through grade three;
- (5) reading performance standards;
- (6) opportunity for parents to receive materials and guidance to assist their child at home; and
- (7) specific measurable, gain-score goals that include:
 - (a) a goal of having every student reading at grade level by the end of grade three;
 - (b) a growth goal for each public school based on student learning gains as measured by benchmark assessments administered to increase the percentage of students who are at or above grade level at the end of third grade pursuant to Section 53A-1-603(2)d;
 - (c) goals for kindergarten, first grade, second grade, and third grade for each public school based upon student learning gains. As of July 1, 2012 this gain score goal must be based on benchmark assessments administered pursuant to Section 53A-1-606.6; and
 - (d) a growth goal for each public school to increase the percentage of third grade students who read on grade level from year to year as measured by the third grade reading test administered pursuant to Section 53A-1-603.
- (8) reporting to parents:
 - (a) effective July 1, 2012, at the beginning, in the middle, and at the end of grade one, grade two, and grade three, parents shall receive their child's benchmark assessment results as required by Section 53A-1-606.6; and
 - (b) at the end of the third grade year, parents shall be notified whether or not the child is at grade level in reading.

B. The school plan shall be created:

- (1) for schools in a district, under the direction of the school community council;
- (2) for charter schools, under the direction of the charter school governing board.

C. Program money shall be used only for reading proficiency improvement and only for students in kindergarten, first grade, second grade, and third grade, and may be used to supplement but not supplant other programs.

D. Program money may be used for:

- (1) reading assessments;
- (2) focused reading interventions that have proven to significantly increase the percentage of students reading at grade level including the use of:
 - (a) reading specialists;
 - (b) tutoring;
 - (c) before or after school programs;
 - (d) summer school programs;
 - (e) the use of reading software;
 - (f) or the purchase of portable technology devices used to administer reading assessments; or
 - (g) the use of interactive computer software programs for literacy instruction and assessments for students.

E. An LEA that uses Program money in a manner that is inconsistent with these rules, Utah law, or established rules of fiscal accountability shall be directed to reimburse the Board for the amount of money improperly used or managed.

F. LEAs shall complete the report pursuant to R277-406-3D within timelines set by the USOE.

G. If for two consecutive years an LEA fails to meet its goal to increase the percentage of third grade students who read on grade level, the LEA shall not receive K-3 Reading Improvement Program money the following year, and an LEA

shall terminate any levy imposed under Section 53A-17a-151.

H. An LEA that loses Program money due to a failure to meet its goal of increasing the percentage of third grade students at grade level may reapply for the Program money upon submission of a revised K-3 Reading Improvement Plan after one year of not receiving Program money.

I. An LEA shall provide data and information for the USOE's year-end Program report to the Public Education Appropriations Subcommittee consistent with Section 53A-17a-150(16). LEAs shall report:

(1) progress in meeting gain score goals for kindergarten, first grade, second grade, and third grade, including information from the previous five years;

(2) progress in meeting the state goal of all students at or above grade level in reading at the end of third grade, including the previous five years; and

(3) how Program money was expended, by categories of expenditure.

**KEY: reading, improvement, goals
August 7, 2013
Notice of Continuation June 10, 2013**

**Art X Sec 3
53A-1-401(3)
53A-17a-150(14)(a)**

R277. Education, Administration.**R277-407. School Fees.****R277-407-1. Definitions.**

A. Fee: Any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through a school. For purposes of this policy, charges related to the National School Lunch Program are not fees.

B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

C. Optional Project: A project chosen and retained by a student in lieu of a meaningful and productive project otherwise available to the student which would require only school-supplied materials.

D. "Provision in Lieu of Fee Waiver" means an alternative to fee payment and waiver of fee payment. A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.

E. Student Supplies: Items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities. The term includes pencils, papers, notebooks, crayons, scissors, basic clothing for healthy lifestyle classes, and similar personal or consumable items over which a student retains ownership. The term does not include items such as the foregoing for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.

F. "Supplemental Security Income for children with disabilities (SSI)" is a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

G. "Temporary Assistance for Needy Families (TANF)," (formerly AFDC) provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

H. Textbook: Book, workbook, and materials similar in function which are required for participation in a course of instruction.

I. Waiver: Release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-2. Authority and Purpose.

A. This rule is authorized under Article X, Sections 2 and 3 of the Utah Constitution which vests general control and supervision of the public education system in the State Board of Education and provides that public elementary and secondary schools shall be free except that fees may be imposed in secondary schools if authorized by the Legislature. Section 53A-12-102(2) authorizes the State Board of Education to adopt rules regarding student fees. This rule is consistent with the State Board of Education document, Principles Governing School Fees, adopted by the State Board of Education on March 18, 1994. This rule is also consistent with the Permanent Injunction, *Doe v. Utah State Board of Education*, Civil No. 920903376.

B. The purpose of this rule is:

- (1) to permit the orderly establishment of a reasonable system of fees;
- (2) to provide adequate notice to students and families of fee and fee waiver requirements; and
- (3) to prohibit practices that would exclude those unable

to pay from participation in school-sponsored activities.

R277-407-3. Classes and Activities During the Regular School Day.

A. No fee may be charged in kindergarten through sixth grades for materials, textbooks, supplies, or for any class or regular school day activity, including assemblies and field trips.

B. Textbook fees may only be charged in grades seven through twelve.

C. Fees may be charged to students in sixth grade only if the student attends a school that includes grades 7, 8, 9, 10, 11, or 12. All school and school district materials and information, including local board-approved fees and parent information, shall include notice that fees may be charged to sixth graders and fee waiver requirements apply.

D. If a class is established or approved which requires payment of fees or purchase of materials, tickets to events, etc., in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the class shall be subject to the fee waiver provisions of R277-407-6.

E. Students of all grade levels may be required to provide materials for their optional projects, but a student may not be required to select an optional project as a condition for enrolling in or completing a course. Project-related courses must be based upon projects and experiences that are free to all students.

F. Schools shall provide school supplies for K-6 students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student through careless or irresponsible behavior.

G. An elementary school or teacher may provide to parents or guardians a suggested list of supplies. The suggested list shall contain the express language in Section 53A-12-102(2)(c).

H. Secondary students may be required to provide their own student supplies, subject to the provisions of Section R277-407-6.

R277-407-4. School Activities Outside of the Regular School Day.

A. Fees may be charged, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity which does not take place during the regular school day, regardless of the age or grade level of the student, if participation is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

B. Fees related to extracurricular activities may not exceed limits established by the LEA. Schools shall collect these fees consistent with LEA policies and state law.

R277-407-5. General Provisions.

A. No fee may be charged or assessed in connection with any class or school-sponsored or supported activity, including extracurricular activities, unless the fee has been set and approved by the LEA and distributed in an approved fee schedule or notice in accordance with this rule.

B. Fee schedules and policies for the entire LEA shall be adopted at least once each year by the LEA in a regularly scheduled public meeting of the LEA. Provision shall be made for broad public notice and participation in the development of fee schedules and waiver policies. Minutes of LEA meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, shall be kept on file by the LEA and made available upon request.

C. Each LEA shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the LEA receives written notice of all current and applicable fee schedules and fee waiver policies, including

easily understandable procedures for obtaining waivers and for appealing a denial of waiver, as soon as possible prior to the time when fees become due. Copies of the schedules and waiver policies shall be included with all registration materials provided to potential or continuing students.

D. No present or former student may be denied receipt of transcripts or a diploma for failure to pay school fees. A reasonable charge may be made to cover the cost of duplicating or mailing transcripts and other school records. No charge may be made for duplicating or mailing copies of school records to an elementary or secondary school in which the student is enrolled or intends to enroll.

E. To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

F. Donations or contributions may be solicited and accepted in accordance with LEA policies, but all such requests must clearly state that donations and contributions are voluntary. A donation is a fee if a student is required to make a donation in order to participate in an activity.

G. In the collection of school fees, LEAs shall comply with statutes and State Tax Commission rules regarding the collection of state sales tax.

R277-407-6. Waivers.

A. An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

The LEA fee waiver policy shall include procedures to ensure that:

(1) at least one person at an appropriate administrative level is designated in each school to administer the policy and grant waivers;

(2) the process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and parents;

(3) students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students or identified to persons who do not need to know;

(4) fee waivers or other provisions in lieu of fee waivers are available to any student whose parent is unable to pay the fee in question; fee waivers shall be verified by a school or LEA administrator consistent with requirements of Section 53A-12-103(5);

(5) the LEA requires documentation of fee waivers consistent with Section 53A-12-103(5);

(6) schools and the LEA submit fee waiver compliance forms consistent with Doe v. Utah State Board of Education, Civil No. 920903376 that affirm compliance with provisions of the Permanent Injunction and provisions of Section 53A-12-103(5);

(7) the LEA does not retain required fee waiver verification documentation for protection of privacy and confidentiality of family income records consistent with 53A-12-103(6);

(8) textbook fees are waived for all eligible students in accordance with Sections 53A-12-201 and 53A-12-204 of the Utah Code and this Section;

(9) parents are given the opportunity to review proposed alternatives to fee waivers;

(10) a timely appeal process is available, including the opportunity to appeal to the LEA or its designee;

(11) any requirement that a given student pay a fee is suspended during any period during which the student's eligibility for waiver is being determined or during which a denial of waiver is being appealed; and

(12) the LEA provides for balancing of financial inequities among schools so that the granting of waivers and provisions in lieu of fee waivers do not produce significant inequities through unequal impact on individual schools.

B. A student is eligible for fee waiver as follows:

(1) income verification consistent with Section 53A-12-103(5);

(2) the student receives (SSI) Supplemental Security Income (ONLY THE STUDENT WHO RECEIVES THE SSI BENEFIT QUALIFIES FOR FEE WAIVERS);

(3) the family receives TANF (currently qualified for financial assistance or food stamps);

(4) the student is in foster care (under Utah or local government supervision);

(5) the student is in state custody.

C. In lieu of income verification, supporting documents shall be required for each special category of fee waiver-eligible students:

(1) For TANF, a letter of decision covering the period for which fee waiver is sought from Utah Department of Workforce Services;

(2) For SSI, a benefit verification letter from Social Security;

(3) For state custody or foster care, the youth in custody required intake form and school enrollment letter or both provided by the case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

D. CASE BY CASE DETERMINATIONS MAY BE MADE FOR THOSE WHO DO NOT QUALIFY UNDER ONE OF THE FOREGOING STANDARDS but who, because of extenuating circumstances such as, but not limited to, exceptional financial burdens such as loss or substantial reduction of income or extraordinary medical expenses, are not reasonably capable of paying the fee.

E. Expenditures for uniforms, costumes, clothing, and accessories (other than items of typical student dress) which are required for school attendance, participation in choirs, pep clubs, drill teams, athletic teams, bands, orchestras, and other student groups, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the LEA, and are subject to the provisions of this section, consistent with Doe v. Utah State Board of Education, Civil No. 920903376, p. 43.

F. Student Records

(1) An LEA or school may pursue reasonable methods to collect fees, but shall not exclude students from school or withhold official student records, including written or electronic grade reports, diploma, or transcripts, for fees owed.

(2) An LEA or school may withhold the official student records of a student responsible for lost or damaged school property consistent with Section 53A-11-806, but may not withhold a student's records that would prevent a student from attending school or being properly placed in school.

(3) Consistent with Section 53A-11-504, a school requested to forward a certified copy of a transferring student's record to a new school shall comply within 30 school days of the request.

G. Charges for class rings, letter jackets, school photos, school yearbooks, and similar articles not required for participation in a class or activity are not fees and are not subject to the waiver requirements.

R277-407-7. Fee Waiver Reporting Requirements.

Beginning with fiscal year 1990-91, each LEA shall attach to its annual S-3 statistical report for inclusion in the State

Superintendent of Public Instruction's annual report the following:

(1) a summary of the number of students in the LEA given fee waivers, the number of students who worked in lieu of a waiver, and the total dollar value of student fees waived by the LEA;

(2) a copy of the LEA's fee and fee waiver policies;

(3) a copy of the LEA's fee schedule for students; and

(4) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.

(5) consistent fee waiver compliance forms provided by the Utah State Office of Education and required by Doe v. Utah State Board of Education, Civil No. 920903376.

KEY: education, school fees

August 7, 2013

Notice of Continuation August 14, 2012

Art X Sec 3

53A-12-102

53A-12-201

53A-12-204

53A-11-806(2)

Doe v. Utah State Board of Education, Civil No. 920903376

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. Any prior year voted and board local funding balance

shall be used to increase the current guarantee for the board and voted local levy programs. Funding shall be distributed based on the increased guarantee per WPU.

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

August 7, 2013

Notice of Continuation October 5, 2012

**Art X Sec 3
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.**R277-425. Budgeting, Accounting, and Auditing for Utah Local Education Agencies (LEAs).****R277-425-1. Definitions.**

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

B. "Modified accrual basis of accounting" means a method under which expenditures other than accrued interest on general long-term debt are recorded at the time liabilities are incurred and revenues are recorded when they become measurable and available to finance expenditures of the current period.

C. "GAAP" means Generally Accepted Accounting Principles, as defined in the Codification of Governmental Accounting and Financial Reporting Standards, as published by the Governmental Accounting Standards Board.

D. "GAAS" means auditing standards established by the American Institute of Certified Public Accountants, generally referred to as Generally Accepted Auditing Standards.

E. "LEA" means local education agency which includes school districts and charter schools.

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

R277-425-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1-402(1)(e)(iv) which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements, Section 53A-1-404 which allows the Board to approve auditing standards for school boards, Section 53A-1-405 which requires the Board to verify accounting procedures of school boards for the purpose of determining the allocation of Uniform School Funds, 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 uniform budgeting, accounting, and auditing procedures for LEAs consistent with Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS).

R277-425-3. Reporting Standards.

A. Each LEA's financial reporting shall be in accordance with GAAP which include GAAS.

B. Each LEA's financial reporting shall be provided in the modified accrual basis of accounting in accordance with GAAP.

C. LEAs shall provide data and information consistent with School Finance budgeting, accounting and auditing standards for Utah LEAs provided online by the Utah State Office of Education, October, 2011 and reviewed annually. The USOE School Finance website contains applicable Utah statutes, applicable Board rules, and uniform rules for:

- (1) budgeting;
- (2) financial accounting;
- (3) student membership and attendance accounting;
- (4) indirect costs and proration;
- (5) financial audits;
- (6) statistical audits; and
- (7) compliance and performance audits.

D. Section 53A-19-103 allows LEAs to have an undistributed reserve not to exceed five percent of the LEA general fund budgeted expenditures. The purpose of the reserve is to meet unexpected and unspecified contingencies.

KEY: education finance

February 7, 2012

Notice of Continuation August 2, 2013

53A-1-402(1)(e)

53A-1-404

53A-1-405

53A-1-401(3)

Art X Sec 3

R277. Education, Administration.**R277-445. Classifying Small Schools as Necessarily Existent.****R277-445-1. Definitions.**

- A. "ADM" means average daily membership derived from end-of-year data.
- B. "Board" means the Utah State Board of Education.
- C. "Superintendent" means the State Superintendent of Public Instruction.
- D. "USOE" means the Utah State Office of Education.
- E. "WPU" means weighted pupil unit: the basic unit used to calculate the amount of state funds a school district may receive.

R277-445-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-109(3) which requires the Board to adopt rules that govern the approval of necessarily existent small schools consistent with state law and ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area.

B. The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent. Schools so classified may receive state funds which are in addition to those received on the basis of the regular WPU formula.

R277-445-3. Standards.

A. A school may be classified as necessarily existent if it meets the following standards:

(1) the average daily membership for the school does not exceed:

- (a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership; or
- (b) 300 for one or two-year secondary schools; or
- (c) 450 for three-year secondary schools; or
- (d) 500 for four-year secondary schools; or
- (e) 600 for six-year secondary schools.

(2) the school meets the criteria of Subsection 3(A)(1) and one-way bus travel over Board approved bus routes for any student from the assigned school to the nearest school within the district of the same type requires:

- (a) students in kindergarten through grade six to travel more than 45 minutes;
- (b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) the school meets the criteria of Subsection 3(A)(1) for grades K-6 if it is an elementary school or grades 7-12 if it is a secondary school except as provided below:

(a) schools with less than six grades are not recognized as necessarily existent small schools if it is feasible in terms of school plant to consolidate them into larger schools and if consolidated would not meet the criteria listed in Subsections 3(A)(1) and 3(A)(2) above;

(b) a secondary complex or attendance area which when analyzed on a 7-12 grade basis, meets the criteria of necessarily existent, shall not have its qualifying status invalidated by a reorganization pattern determined by a district;

(c) in unusual circumstances, where in the judgment of a panel of at least five USOE staff members designated by the Superintendent, the existing conditions warrant approval of a middle school, such a school may be designated by the Superintendent as a necessarily existent small school, provided it meets the criteria listed in Subsection 3(A)(1) above or

3(A)(4) below.

(4) the school meets the criteria of Subsection 3(A)(1), may not meet the criteria of Subsection 3(A)(2), but is in a district which has been consolidated to the maximum extent possible, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined;

(5) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), but there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years.

(a) The school may be classified as necessarily existent until its ADM surpasses the size standard for small schools of the same type.

(b) The school's ADM shall be annually compared to the school's projected ADM to determine increases or decreases in enrollment.

(c) An increase in the school's ADM shall be 80 percent of the projected annual increase. If the assessment for the first or second year shows the increase in the ADM is less than 80 percent, the school shall no longer be classified as necessarily existent;

(6) the school meets both the criteria of Subsection 3(A)(1) and at least the accredited with comment level of Board accreditation standards (as provided in R277-410, R277-411, and R277-412), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), or 3(A)(5), but there is evidence as determined by the Superintendent that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

(a) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the USOE after consultation with the district; or

(b) the district shall incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs exceed the insurance replacement value of the exiting school by 30 percent. The existing school shall have a life expectancy of at least ten years. In the event that the ADM from the school seeking necessarily existent small school status when combined with the ADM at the existing school exceed criteria in R277-445-3A(1), the existing school would be disqualified.

(c) schools qualifying under standard (b) above shall be evaluated every five years.

(7) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), 3(A)(5), or 3(A)(6), and the removal of the necessarily existent status results in capital costs which the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources or a combination of the sources.

B. Any prior year funding balance in the Necessarily Existent Small Schools Program shall be distributed by the USOE in the current year using a formula that considers the tax effort of a local board of education.

C. Additional WPU funds allocated to school districts for necessarily existent small schools shall be utilized for programs at the school for which the units were allocated. The funds must supplement and not supplant other funds allocated to special schools by the local board of education.

D. Schools shall be classified after consultation with the district and in accordance with applicable state statutes and Board standards.

KEY: school enrollment, educational facilities**August 7, 2013****Notice of Continuation August 14, 2012****Art X Sec 3****53A-1-401(3)****53A-17a-109(3)**

R277. Education, Administration.**R277-470. Charter Schools - General Provisions.****R277-470-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2).
- C. "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.
- D. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.
- E. "Expansion" means a proposed ten percent increase of students or adding grade level(s) in an operating charter school at a single location.
- F. "Mentor," for purposes of the mentoring program, means an individual with experience as a charter school governing board member, employee, advisor, or a public educator with an area of expertise or demonstrated competence, willing to advise charter schools, approved by the State Charter School Board to participate in the mentoring program.
- G. "Mentoring program," for purposes of this rule, means the State Charter School Board mentoring program.
- H. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.
- I. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.
- J. "State Charter School Board" means the board designated in Section 53A-1a-501.5.
- K. "USOE" means the Utah State Office of Education.
- L. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.

R277-470-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for authorizing, funding, and monitoring charter schools and for repealing charter school authorizations. The rule also establishes timelines as required by law to provide for adequate training for beginning charter schools.

R277-470-3. Maximum Authorized Charter School Students.

A. Local school boards and institutions of higher education may approve charter schools by notifying the State Charter School Board by April 1 of the calendar year two years prior to opening of proposed charter schools, including authorized numbers of students and other information as required in Sections 53A-1a-515 and 53A-1a-521.

B. The Board, in consultation with the State Charter School Board and chartering entities, may approve schools, expansions and satellite charter schools for the total number of

students authorized under Section 53A-1a-502.5

C. The number of students requested from all chartering entities shall be considered as students are allocated by the State Charter School Board and approved by the Board.

R277-470-4. Charter Schools and NCLB Funds.

A. Charter schools that desire to receive NCLB funds shall comply with the requirements of R277-470-4.

B. To obtain its allocation of NCLB formula funds, a charter school shall complete all appropriate sections of the Utah Consolidated Application (UCA) and identify its economically disadvantaged students in the October upload of the Data Clearinghouse.

C. If the school does not operate a federal school lunch program, the school:

(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or

(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.

D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

R277-470-5. Charter School Start-up and Implementation Grants.

A. Charter schools that desire to receive State Charter School Board start-up and implementation grant funds shall comply with the requirements of R277-470-5.

B. To receive a State Charter School Board start-up or implementation grant, a charter school shall be eligible and meet the requirements consistent with Section 53A-1a-507.

C. Eligible charter schools shall complete an application and may be awarded a grant for no more than 36 months.

D. Only schools that have not received state start-up or implementation grant funds in prior years are eligible.

E. Amounts and conditions of distribution of state start-up or implementation grant funds shall be determined annually in conjunction with the State Charter School Board's new charter approval process.

F. Grant funds may only be used for allowable expenditures as provided by the State Charter School Board.

G. Grant recipients shall participate in monitoring activities.

H. Grantee schools shall provide monitoring information to the USOE, as directed.

I. Charter schools shall repay grant funds to the State Charter School Board if recipients change to non-charter status within ten years of receiving grant funds. An exception may be made for schools that convert status due to either federal or state law requirements for academic purposes.

R277-470-6. Charter School Mentoring Program.

A. Board-approved or existing charter schools may choose to participate in the mentoring program.

B. Charter schools choosing to participate in the mentoring program shall submit an application to the USOE, consistent with USOE timelines.

C. Subject to the availability of funds, participating charter schools shall be eligible for reimbursement of allowable expenditures through the mentoring program if the charter school:

(1) submits an approved reimbursement form; and

(2) submits an approved mentor and program evaluation.

D. Allowable expenditures in the mentoring program include:

(1) mileage for mentor to and from home base to

participating charter school, consistent with the USOE adopted travel policy;

(2) lodging consistent with the USOE adopted travel policy;

(3) meals consistent with the USOE adopted travel policy; and

(4) substitute per diem (paid to mentor's employer) of \$65 for a full day or \$32.50 for a half day, if the mentor has to miss work and a substitute is necessary.

E. A mentor shall submit an application to the State Charter School Board to participate in the mentoring program that identifies areas of expertise and demonstrated competencies.

F. The State Charter School Board shall:

(1) receive an annual program report from the USOE;

(2) evaluate the mentoring program annually;

(3) publish, on its website, information from participating schools regarding mentor evaluations; and

(4) maintain a list of approved mentors.

KEY: education, charter schools

August 8, 2012

Notice of Continuation August 2, 2013

Art X, Sec 3

53A-1a-515

53A-1a-505

53A-1a-513

53A-1-401(3)

53A-1a-510

53A-1a-519

53A-1a-501.5

53A-1-301

53A-1a-502.5

53-8-211

62A-4a-403

53A-11-605

53A-1a-522

53A-1a-521

53A-1a-501.3

53A-1a-513.5

R277-470-7. Charter School Parental Involvement.

A. Charter schools shall encourage and provide opportunities for parental involvement in management decisions at the school level.

B. Charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds consistent with R277-477-3E.

R277-470-8. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

D. Charter school students and their parents who participate in transportation by the school district as guests shall receive notice of applicable district transportation policies and may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-9. Miscellaneous Provisions.

A. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety or welfare of students consistent with Section 53A-1a-510(3).

(1) Individuals making reports shall be directed to report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with Sections 62A-4a-403 and 53A-11-605(3)(a).

(2) Additionally, individuals may report threats to the health, safety or welfare of students to the charter school governing board.

(a) reports shall be made in writing;

(b) reports shall be timely;

(c) anonymous reports shall not be reviewed further.

(3) Charter school governing boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Charter school governing boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

C. The Board shall have authority for final approval of all charter schools. All charter schools shall be subject to accountability standards established by the Board and to monitoring and auditing by the Board.

R277. Education, Administration.**R277-477. Distribution of Funds from the Interest and Dividend Account and Administration of the School LAND Trust Program.****R277-477-1. Definitions.**

A. "Approving Entity" means the school district, University, or other legally authorized entity that approves or rejects plans for a district or charter school.

B. "Board" means the Utah State Board of Education. The Board is the primary beneficiary representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

C. "Chartering Entity" means the school district, Board, university, or other entity authorized to charter a school.

D. "Charter trust land council" means a council comprised of a two person majority of elected parents or guardians of students attending the charter school and may include other members, as determined by the board of the charter school. The governing board of a charter school may serve as a charter trust land council if the board membership includes at least two more parents or guardians of students currently enrolled at the school than all other members combined consistent with Section 53A-16-101.5. If not, the board of the charter school shall develop a school policy governing the election of a charter trust land council. R277-491 does not apply to charter trust land councils.

E. "Councils" means school community councils and charter trust lands councils.

F. "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

G. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

H. "Interest and Dividends Account" means a restricted account within the Uniform School Fund created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year. The funds are distributed to school districts, charter schools and the USDB through the School LAND Trust Program at the beginning of the next fiscal year.

I. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts and is directed in Section 53A-16-101.5(5)(b) to approve School LAND Trust plans for schools under the local board's authority.

J. "Most critical academic needs" for purposes of this rule means academic needs identified in an individual school's improvement plan developed consistent with Section 53A-1a-108.5 or identified in the school charter.

K. "School Children's Trust Section" means employees who report to the State Superintendent of Public Instruction (Superintendent) or Superintendent's designee and have responsibilities as outlined in Sections 53A-16-101.5 and 53A-16-101.6.

L. "School community council" means the council organized at each school district public school as established in Section 53A-1a-108 and R277-491. The council includes the principal, school employee members and parent members. There shall be at least a two parent member majority.

M. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board.

N. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

O. "Student" means a child in public school grades

kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

P. "USDB" means the Utah Schools for the Deaf and the Blind.

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

R277-477-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide financial resources to public schools to enhance or improve student academic achievement and implement an academic component of the school improvement plan;

(2) involve parents and guardians of a school's students in decision making regarding the expenditure of School LAND Trust Program money allocated to the school;

(3) provide direction in the distribution from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2);

(4) provide for appropriate and adequate oversight of the expenditure and use of School LAND Trust monies by designated local boards of education, chartering entities, and the Board;

(5) provide for:

(a) reviewing and monitoring of funds and revenue generated by school trust lands and the permanent State School Fund;

(b) compliance by councils with requirements in statute and Board rule; and

(c) allocation of the monies as provided in Section 53A-16-101.5(3)(c) based on student count.

(6) define the roles, duties, and responsibilities of the School Children's Trust Section within the USOE.

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

A. All public schools receiving School LAND Trust Program funds shall have a council as required by Sections 53A-1a-108 and R277-491, a charter school trust lands council as required in 53A-16-101.5 (7), or have a local board approved exemption under R277-491-3(C). District public schools and charter schools shall submit a Principal Assurance Form, as described in R277-491(5)(a).

B. All charter schools that elect to receive School LAND Trust funds shall have a charter trust lands council, develop an academic plan in accordance with the school charter, and report the date when the charter trust lands council and charter board approved the plan. Plans shall be submitted on the School LAND Trust Program website no later than May 1.

C. Local boards of education or the other approving entity shall consider plans annually and may approve or disapprove a school plan. If a plan is not approved, the approving entity shall provide a written explanation of why the plan was not approved and request a revised plan for reconsideration, consistent with Section 53A-16-101.5.

D. Information on each school's plan to address most critical academic needs shall be completed via the School LAND Trust website maintained through the USOE for accurate and uniform reporting.

E. Plans shall be electronically submitted to the USOE on the School LAND Trust Program website, including a record of

the vote by the school community council or charter trust land council when the school plan was approved including the date of the vote, votes for, against, and absent, consistent with Section 53A-16-101.5.

F. To facilitate submission of information by schools, each school board shall establish a school district submission date for the school district schools not later than May 1 of each year. Timelines shall allow for school committee reconsideration and amendment of the school plan following local board of approving entity explanation or plan rejection.

G. Funds shall only be distributed to schools with plans approved by the approving entity.

H. Prior to distribution of funds, the School Children's Trust Section shall ensure that plans include academic goals, specific steps to meet those goals, measurements to assess improvement and specific expenditures focused on student academic improvement. Funds shall not be distributed until schools have an approved plan to use their funds to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5 and R277-477. For charter schools, the School Children's Trust Section shall provide notice to the SCSB of changes required of charter schools for compliance with state law and Board rule.

I. Examples of successful plans using School LAND Trust Program monies include programs focused on:

- (1) credit recovery courses and programs;
- (2) study skills classes;
- (3) college entrance exam preparation classes;
- (4) academic field trips;
- (5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps or books;
- (6) teachers, teacher aides, and student tutors;
- (7) professional development directly tied to school academic goals;
- (8) student focused educational technology, including hardware and software, computer carts and work stations;
- (9) books, textbooks, workbooks, library books, bookcases, and audio-visual materials;
- (10) student planners; and
- (11) nominal student incentives that are academic in nature or of marginal total cost.

I. Examples of plans ineligible for School LAND Trust Program funding include, but are not limited to:

- (1) security;
- (2) phone, cell phone, electric, and other utility costs;
- (3) behavior, character education, bullying prevention;
- (4) sports and playground equipment;
- (5) athletic or intermural programs;
- (6) extra-curricular non-academic expenditures;
- (7) audio-visual systems in non-classroom locations;
- (8) non-academic field trips;
- (9) food and drink for council meetings or parent nights;
- (10) printing and mailing costs for notices to parents;
- (11) accreditation, administrative, clerical, or secretarial costs;
- (12) cash or cash equivalent incentives for students;
- (13) other furniture; and
- (14) staff bonuses.

J. Schools serving students with disabilities may use funds as needed to directly influence and improve student performance according to the students' Individual Education Plans (IEPs).

K. The school trust is intended to benefit all of Utah's school children. Councils are encouraged to design and implement plans in a way to benefit all children at each school.

L. School districts and charter schools wishing to submit information to the School LAND Trust website through a comprehensive electronic plan shall meet the parameters for programming and data entry required by the USOE. They shall

review School LAND Trust plans on the USOE website prior to local board of education or chartering entity approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

M. A form that includes the names of members of the council shall be signed by members of the council to indicate their involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year. The form shall be uploaded to the database by the principal, director, or school district employee.

N. When approving school plans on the School LAND Trust Program website, the approving entity shall report the meeting date(s) when the approving entity approved the plans.

R277-477-4. Distribution of Funds - Determination of Proportionate Share.

A. A designated amount appropriated by the Legislature from the Interest and Dividends Account shall be used to fund the School Children's Trust Section, the administration of the program and other duties outlined in this rule and Sections 53A-16-101.5 and 53A-16-101.6. Any unused balance initially allocated for School LAND Trust Program administration shall be deposited in the Interest and Dividends Account for future distribution to schools in the School LAND Trust Program.

B. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

C. Each school district shall distribute funds received under R277-477-3A to each school within each school district on an equal per student basis.

D. Charter schools shall receive funding from the USOE on a per pupil basis, provided that each charter school receives at least 1/25 of one percent of the total available to charter schools as a group. The remainder of the distribution to charter schools shall be allocated to all charter schools that do not receive the minimum amount, on a per pupil basis.

E. Local boards of education shall adjust distributions, maintaining an equal per student distribution within a school district for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

F. If a school chooses not to apply for School LAND Trust Program funds nor meet the requirements for receiving funds, the funds allocated for that school shall be retained by the USOE and included with the statewide distribution for the following school year.

G. Local boards and school districts shall ensure timely notification to chairs and principals of the availability of the funds to schools with approved plans.

H. Plans submitted by the USDB governing board shall be reviewed and approved by the School Children's Trust Section and reported to the State Superintendent or designee.

R277-477-5. School LAND Trust Program: Implementation of Plans and Required Reporting.

A. Schools shall make full good faith efforts to implement the plan as approved.

B. The school community council or charter school trust land council may amend a current year plan when necessary. The council shall amend the plan by a majority vote of a quorum of the council. A school's website shall show an amended plan.

C. Funds not used in the school approved plan may be carried over by the school to the next school year and added to the School LAND Trust Program funds available for expenditure in that school the following year.

D. Schools shall provide an explanation for any carry over that exceeds one-tenth of the school's allocation in the school plan or report. Districts and schools with consistently large carryover balances over multiple years are not making adequate and appropriate progress on their plans, and shall be subject to compliance review findings and corrective action. E. District and charter school business officials shall enter prior year audited expenditures by category on the School LAND Trust website on or before October 15th. The expenditure data shall appear in the final reports submitted online by principals for reporting to parents as required in Section 53A-1a-108.

F. Expenditures made after the close of the fiscal year shall be accounted for as expenditures in the following fiscal year.

G. Final reports shall be submitted by schools on the website by November 15.

R277-477-6. School LAND Trust Program - School Children's Trust to Review Compliance.

A. The financial report in each school final report shall be reviewed by the School Children's Trust Section for consistency with the narrative submitted by that council.

B. Final reports indicating that funds from the School LAND Trust Program were expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477 or R277-491 and/or inconsistent with the school board/charter board approved plan shall be listed by the School Children's Trust Section and reported to the district contact, district superintendent, and local board or charter board president annually.

C. USOE staff may visit schools receiving funds from the School LAND Trust Program as directed by the Superintendent to discuss the program, receive information and suggestions, provide training, and answer questions.

D. Annual compliance reviews shall be conducted to review expenditure of funds relative to the approved plan and allowable expenses.

E. The School Children's Trust Section shall report annually to the Board Audit Committee on compliance review findings and other compliance issues. The Board Audit Committee shall make determinations regarding questioned costs and corrective action, following review and consideration of compliance and financial reviews conducted by the School Children's Trust Section.

F. The State Board Audit Committee may reduce or eliminate funds if a school has failed to comply with code or Board rule.

KEY: schools, trust lands funds

August 7, 2013

Notice of Continuation June 10, 2013

**Art X Sec 3
53A-16-101.5(3)(c)
53A-1-401(3)**

R277. Education, Administration.**R277-481. Charter School Oversight, Monitoring and Appeals.****R277-481-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2).
- C. "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.
- D. "Charter school agreement (charter agreement)" means the terms and conditions for the operation of an approved charter school. The charter school agreement shall be maintained at the USOE and is considered the final, official and complete agreement.
- E. "Charter school deficiencies" means the following information:
- (1) a charter school is not satisfying financial, academic or operational obligations as required in its charter agreement;
 - (2) a charter school is not providing required documentation after being placed on warning status;
 - (3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees. Fraud or misuse of funds need not rise to the minimal standard. It may include failure to properly account for funds received at the school; failure to follow regularly established accounting and receipting practices or failure to provide data, financial records or information as requested by the State Charter School Board or the Board.
- F. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.
- G. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.
- H. "Probation" means a formal process and time period during which a school is permitted to demonstrate its full compliance with its charter agreement and all applicable laws, rules and regulations.
- I. "State Charter School Board" means the board designated in Section 53A-1a-501.5.
- J. "Superintendent" means the State Superintendent of Public Instruction as designated under Section 53A-1-301.
- K. "USOE" means the Utah State Office of Education.
- L. "Warning status" means an informal status in which a school is placed through written notification from the USOE for the school's failure to maintain compliance with its charter agreement, applicable laws, rules or regulations.

R277-481-2. Authority and Purpose.

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.
- B. The purpose of this rule is to establish procedures for oversight and monitoring charter agreements and charter schools for compliance with minimum standards. The rule also provides appeals criteria and a process for schools found out of compliance with State Charter School Board findings.

R277-481-3. State Charter School Board Oversight, Minimum Standards, and Consequences.

- A. The State Charter School Board shall provide direct oversight to the state's Board chartered schools, including requiring all charter schools to:

- (1) comply with their charter agreement containing clear and meaningful expectations for measuring charter school quality.
 - (2) be members of and fully accredited by the Northwest Accreditation Commission by the end of its fourth year of operation;
 - (3) annually review charter agreements, as maintained by the USOE;
 - (4) regularly review other matters specific to effective charter school operations as recommended by the USOE staff; and
 - (5) audit and investigate claims of fraud or misuse of public assets or funds.
- B. All charter schools shall also meet the following minimum standards:
- (1) charter schools shall have no unresolved material findings, financial condition findings or repeat significant findings in the school's independent financial audit, federal single audit or USOE audits;
 - (2) charter schools shall maintain a minimum of 30 days cash on hand or the cash or other reserve amount required in bond covenants, whichever is greater;
 - (3) charter schools shall have no violations of federal or state law or regulation, Board rules or Board directives;
 - (4) charter schools shall have all teachers properly licensed and endorsed for teaching assignments in CACTUS; and
 - (5) charter school governing boards shall ensure all employees and board members have criminal background checks on file.
- C. Warning status
- (1) A charter school that fails to meet any of the minimum standards or a significant number of the guidance provisions found in the Utah Charter School Best Practice Guidelines may be placed on warning status and notified in writing by the USOE.
 - (2) While a school is on warning status, the school may seek technical assistance from the USOE staff to remedy any deficiencies.
- D. Probation status
- (1) If any minimum standard or a significant number of the guidance provisions has not been met by an assigned date following designation of warning status, as evidenced by a second report identifying the same problem(s), the State Charter School Board shall notify the school in writing of the specific minimum standard(s) the school did not meet.
 - (2) Based on the State Charter School Board's review of the charter school's noncompliance, progress and response to technical assistance, the State Charter School Board may place the school on probation for up to one calendar year following the designation of warning status.
 - (3) Upon placing a school on probation, the State Charter School Board shall set forth a written plan outlining those provisions in the charter agreement, applicable laws, rules and regulations with which the school is not in full compliance. This written plan shall set forth the terms and conditions and the timeline that the school shall follow in order to be removed from probation.
 - (4) If the school complies with the written plan in a timely manner, the State Charter School Board shall remove the school from probation.
 - (5) While a school is on probation, it shall be required to satisfy certain requirements and conditions set forth by the State Charter School Board. If the school fails to satisfy specific requirements and conditions by a date established by the State Charter School Board, the State Charter School Board may terminate the school's charter.
 - (6) While a school is on probation, the school may seek technical assistance from the USOE staff to remedy any

deficiencies.

(7) The State Charter School Board may, for good cause, or if the health, safety, or welfare of the students at the school is threatened at any time during the probationary period, terminate the charter immediately.

R277-481-4. Charter School Governing Board Compliance with Law.

A. The Board may review or terminate the charter based upon factors that may include:

- (1) failure to meet measures of charter school quality which includes adherence to a charter agreement required and monitored by the State Charter School Board; or
- (2) charter school deficiencies; or
- (3) failure of the charter school to comply with federal or state law or regulation, Board rules or Board directives.

B. If a charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted to require compliance with such law or rule; all other provisions of the school's charter shall remain in full force and effect.

C. A charter school shall notify the Board and the chartering entity of any and all lawsuits filed against the charter school within 30 days of the filing of the lawsuit.

R277-481-5. Chartering Entity Oversight and Monitoring.

A. Local school board and institutions of higher education chartering entities shall:

- (1) visit a charter school at least once during its first year of operation in order to ensure adherence to and implementation of approved charter and to finalize a review process;
- (2) visit a charter school as determined in the review process; and
- (3) provide written reports to a charter school after the visits that set forth strengths, deficiencies, corrective actions, timelines and the reason for charter termination, if applicable.

B. Chartering entities shall notify the Board within 20 days of charter school deficiencies that initiate corrective action by chartering entities.

R277-481-6. Charter School Financial Practices and Training.

A. Charter school business administrators shall attend USOE required business meetings for charter schools.

B. Charter school governing board members and school administrators shall be invited to all applicable Board-sponsored training, meetings, and sessions for traditional school district financial personnel.

C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.

D. A charter school shall appoint a business administrator consistent with Sections 53A-3-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.

E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.

F. Charter schools shall comply with the Utah State Procurement Code, Title 63G, Chapter 6.

G. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.

R277-481-7. Remediating Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school deficiencies, the State Charter School Board shall immediately direct a review or audit through the charter school governing

board, by State Charter School Board staff, or by an independent auditor hired by the State Charter School Board.

B. The State Charter School Board or the Board through the State Charter School Board may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.

C. The State Charter School Board or the Board may:

- (1) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;
- (2) immediately terminate the flow of state funds;
- (3) recommend cessation of federal funding to the school;
- (4) take immediate or subsequent corrective action with employees who are responsible for charter school deficiencies consistent with Section 53A-1a-509; or
- (5) any combination of the foregoing (1), (2), (3) and (4).

D. The recommendation by the State Charter School Board shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The State Charter School Board may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the State Charter School Board's recommendation(s) for remedying a charter school's deficiency(ies) within 60 days of receipt of information from the State Charter School Board.

G. In addition to remedies provided for in Section 53A-1a-509, the State Charter School Board may provide for a remediation team to work with the school.

R277-481-8. Appeals Criteria and Procedures.

A. Only an operating charter school, a charter school that has been recommended by the State Charter School Board to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal State Charter School Board administrative decisions or recommendations to the Board.

B. The following State Charter School Board administrative decisions may be appealed to the Board:

- (1) termination of a charter;
- (2) denial of proposed amendments to charter agreement;
- (3) denial or withholding of funds from charter school governing boards; and
- (4) denial of a charter.

C. Appeals procedures and timelines

(1) The State Charter School Board shall, upon taking any of the administrative actions:

- (a) provide written notice of denial to the charter school or approved charter school;
- (b) provide written notice of appeal rights and timelines to the charter school governing board chair or authorized agent; and
- (c) post information about the appeals process on the USOE website and provide training to charter school governing board members and authorized agents regarding the appeals procedure.

(2) A charter school governing board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the State Charter School Board administrative action.

(3) The Superintendent shall, in consultation with Board Leadership, review the written appeal and determine if the appeal addresses an administrative decision by a chartering entity. If the Superintendent and Board Leadership determine that the appeal is appropriate, Board Leadership shall designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.

(4) The hearing officer, in consultation with the

Superintendent, shall set a hearing date and provide notice to all parties, including the State Charter School Board and staff.

(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.

(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:

(a) a request for parties to provide a written explanation of the appeal and related information and evidence;

(b) a determination of time limits and scope of testimony and witnesses;

(c) a determination for recording the hearing;

(d) preliminary decisions about evidence; and

(e) decisions about representation of parties.

(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.

(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.

(9) The recommendation of the State Charter School Board shall be in place pending the conclusion of the appeals process, unless the Superintendent in his sole discretion, determines that the State Charter School Board's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.

(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

KEY: charter schools, oversight, monitoring, appeals

January 10, 2012

Notice of Continuation August 2, 2013

Art X Sec 3

53A-1-401(3)

53A-1a-501.3

53A-1a-515

53A-1a-521

53A-1a-505

53A-1a-501.5

53A-1a-510

53A-1a-509

53A-1-301

53A-3-302

53A-3-303

53A-17a-109

R277. Education, Administration.**R277-482. Charter School Timelines and Approval Processes.****R277-482-1. Definitions.**

A. "Amendment," for purposes of this rule, means a change or addition to the charter agreement.

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

C. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2).

D. "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.

E. "Charter school agreement (charter agreement)" means the terms and conditions for the operation of an approved charter school. The charter school agreement shall be maintained at the USOE and is considered the final, official and complete agreement.

F. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.

G. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.

H. "Expansion" means a proposed ten percent increase of students or adding grade level(s) in an operating charter school at a single location.

I. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

J. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.

K. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

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

R277-482-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for timelines and approval processes for charter schools.

R277-482-3. Charter School Application and Training.

A. All charter school applicants shall attend pre-application and planning year training sessions, as well as other training sessions designated by the State Charter School Board.

B. Pre-application training sessions shall be scheduled four times annually and may be available electronically, as determined by the State Charter School Board.

C. Charter schools and applicants that attend training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training sessions may receive priority for approval from the State Charter School Board and

the Board.

D. Training sessions shall provide information including:

- (1) charter school implementation requirements;
- (2) charter school statutory and Board requirements;
- (3) charter school financial and data management requirements;
- (4) charter school legal requirements;
- (5) federal requirements for charter school funding; and
- (6) other items as determined by the State Charter School Board.

R277-482-4. New or Expanding Charter School Notification to Prospective Students and Parents.

A. All new or expanding charter schools shall have available on its website and notify all families consistent with the schools' outreach plans described in the charter agreements of:

- (1) the school's approved charter, purpose, focus and governance structure, including names, qualifications, and contact information of all governing board members;
- (2) the number of new students that will be admitted into the school by grade;
- (3) the proposed school calendar for the charter school, including at a minimum the first and last days of school, scheduled holidays, scheduled professional development days (no student attendance), and other scheduled non-school days;
- (4) the charter school's timelines for acceptance of new students consistent with Section 53A-1a-506.5;
- (5) the requirement and availability of a State-approved charter school student application;
- (6) procedures for transferring to or from a charter school, together with applicable timelines; and
- (7) provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Section 53A-12-103.

B. New or expanding charter schools shall provide written notice of the information in R277-482-4A consistent with the school's outreach plan and on the school's website at least 180 days before the proposed opening day of school.

C. New or expanding charter schools shall have an operative and readily accessible electronic website providing information required under R277-482-4A in place. The completed charter school website shall be provided to the State Charter School Board for review at least 210 days prior to the proposed opening day of school and prior to posting the websites publicly.

D. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and may give priority to charter school applications that target underserved student populations, or provide an innovative educational program, service, or setting as determined by the State Charter School Board, among traditional public schools and operating charter schools.

(1) Underserved student populations may include economically disadvantaged students, students with disabilities, English language learners, children of refugee families, or students in remote areas of the state who have limited access to the full range of academic courses;

(2) Innovative educational opportunities shall be described on the State Charter School Board's website;

(3) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and

(4) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.

E. The Board or State Charter School Board may request documentation of underserved student criteria that schools designate and for which they request a preference.

F. The Board shall have authority for final approval of all charter schools.

R277-482-5. Timelines - Charter School Starting Date.

A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.

B. Only charter schools approved within the state fiscal year two years prior to the state fiscal year it intends to serve students shall be eligible for state funds.

C. A state-chartered school shall acquire a facility and enter into a written agreement, or begin construction on a new or existing facility no later than January 1 of the year the school is scheduled to open.

D. Each charter school shall submit any lease, lease-purchase agreement, or other contract or agreement relating to the charter school's facilities or financing the charter school facilities to its chartering entity for review and advice prior to the charter school entering into the lease, agreement, or contract, consistent with Section 53A-1a-507(9).

E. A state-chartered school that intends to lease a facility requiring only minimal renovation shall enter into a written agreement no later than May 1 of the calendar year the school is scheduled to open.

F. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.

G. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under Section 53A-1a-511.

H. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.

R277-482-6. Procedures and Timelines to Change Chartering Entities.

A. A charter school may change chartering entities.

B. A charter school shall submit an application provided by the new chartering entity to the Board to request a new chartering entity at least three months prior to the proposed change.

C. The application may require some or all of the following, as determined by the new chartering entity:

- (1) current board members and founding members;
- (2) financial records, including most recent annual financial report (AFR), annual project report (APR) and audited financial statement;
- (3) test scores, including U-PASS, Adequate Yearly Progress, and status under No Child Left Behind;
- (4) current employees: identifying assignments and licensing status, if applicable;
- (5) school calendar for previous school year and prospective school year;
- (6) course offerings, if applicable;
- (7) affidavits, signed by all board members providing or certifying (documentation may be required):
 - (a) the school's nondiscrimination toward students and employees;
 - (b) the school's compliance with all state and federal laws and regulations;
 - (c) that all information on application provided is complete and accurate;
 - (d) that school meets/complies with all health and safety codes/laws;

(e) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the most recent three months;

(f) that the school is operating consistent with the school's charter;

(g) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the school;

D. A charter school seeking to change chartering entities shall submit a position statement from the current chartering entity about school status, compliance with the chartering entity requirements and any unresolved concerns to the proposed new chartering entity.

E. An application for changing a chartering entity shall be reviewed for acceptance by the new chartering entity within 60 days of submission of complete application, including all required documentation.

F. The Board shall consider an application to change chartering entities to the State Charter School Board within 60 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.

G. Final approval or denial of changing chartering entities to the State Charter School Board is final administrative action by the Board.

R277-482-7. Approved Charter School Expansion.

A. The following shall apply to requests for expansion from approved and operating charter schools:

(1) The school satisfies all requirements of federal and state law, regulations, Board rule and charter agreement.

(2) The approved charter agreement shall provide for an expansion consistent with the request; or

(3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:

(a) the school district in which the charter school is located has been notified of the proposed expansion and location of the school in the same manner as required in Section 53A-1a-505(1);

(b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation;

(c) the securing of the building site shall be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy pursuant to R277-482-5C;

(d) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the expansion for at least one school year;

(e) written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the State Charter School board and school district of the specific school location;

(f) students at the school are performing on standardized assessments at or above the standard in the charter agreement; and

(g) adequate qualified administrators and staff shall be available to meet the needs of the increased number of students at the time the expansion is implemented.

B. If an expansion request requires a new facility, the request shall be submitted to the State Charter School Board before April 1 of the state fiscal year two state fiscal years prior to the date the school intends to expand.

C. If the expansion request does not require a new facility, the request shall be made before April 1 of the state fiscal year one state fiscal year prior to the intended expansion date.

D. If the expansion request is for an increase in enrollment capacity in the amount of 0.25 times or less, the number of

students in grades 9 through 12 enrolled in an online course in the previous school year through the Statewide Online Education Program, the request shall be submitted to the Board by October 1 of the school year for which the increase is requested.

E. Requests under R277-482-7D are subject to the availability of sufficient funds appropriated under Section 53A-1a-513 to provide the full amount of the per student allocation for each charter school student in the state to supplement school district property tax revenues.

D. Expansion requests shall be considered by the State Charter School Board as part of the total number of charter school students allowed under Section 53A-1a-502.5(1).

R277-482-8. Satellite School for Approved Charter Schools.

A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school no later than April 1 of the state fiscal year two state fiscal years prior to the date of the proposed implementation of the satellite if the charter school fully satisfies the following:

- (1) The school currently satisfies all requirements of state law and Board rule;
- (2) The school has operated successfully for at least three years meeting the terms of its charter agreement;
- (3) Students at the school are performing on standardized assessments at or above the standard in the charter agreement;
- (4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;
- (5) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite school;
- (6) The school provides any additional information or documentation requested by the State Charter School Board or the Board.
- (7) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.

B. The satellite school amendment request shall include the following:

- (1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of federal and state law, Board rule and charter agreement;
- (2) A detailed explanation of the governance structure for the satellite school, including appointed or elected representation on the governing board;
- (3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;
- (4) A detailed financial plan for the satellite school;
- (5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;
 - (a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy pursuant to R277-482-5C;
 - (b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.
- (6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);
- (7) Written certification that no later than 15 days after securing a building site, the charter school governing board

shall notify the school district in which the satellite school is located of the school location, grades served, and anticipated enrollment by grade with a copy of the notification sent to the State Charter School Board; and

(8) A signed acknowledgment by the charter school governing board that the board understands the satellite school shall be held to its own charter agreement, including academic and operational performance.

C. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.

KEY: training, timelines, expansion, satellite August 8, 2012 Notice of Continuation August 2, 2013

**Art X Sec 3
53A-1a-513
53A-1-401(3)
53A-1a-502.5**

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

F. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated to submit data to the U.S. Department of Education.

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

H. "LEA" means local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

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

J. "MST" means Mountain Standard Time.

K. "Schools interoperability framework (SIF)" means an open global standard for seamless, real time data transfer and usage for Utah public schools.

L. "Student information system (SIS)" means a student data collection system used for Utah public schools.

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

N. "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.

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

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. LEAs shall submit data to the USOE as directed by 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.

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 1

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

(2) Other Emergency (Earthquake and School Violence) Drills Compliance Statement - for prior year;

(3) Emergency Preparedness Compliance Statement - for prior year;

(4) Emergency Response Plan - for prior year.

E. July 7 - UTREx - final comprehensive update for prior year.

F. July 15

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

(2) Classified Personnel Report - for prior year;

(3) Driver Education Report - for prior year;

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

(5) Fee Waivers Report - for prior year;

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

(7) Teacher Benefits Report - for prior year;

(8) Pupil Transportation Statistics - for prior year:

(a) Bus Inventory Report;

(b) Year End Pupil Transportation Statistics Reports;

(9) Copy of local school board-adopted budget - for next fiscal year, unless the local school board provides documentation of planned truth-in-taxation process.

G. August 15 - copy of the local school board-adopted budget - for next fiscal year, if the local school board provides documentation of planned truth-in-taxation process.

H. September 15

(1) Membership Audit Report - for prior year;

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

I. October 1

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

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

(3) Annual assurance letter required for compliance information and documentation for identified programs and funds, pursuant to R277-108.

J. Seven business days after October 1 - UTREx - complete update required as of October 1 for current year.

K. October 15 - UTREx - revised update as of October 1 for current year, if significant errors are identified by the USOE or the LEA.

L. 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.

M. November 15

(1) CACTUS - update for current year; and

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

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

O. Seven business days after December 1 - UTREx - complete update required as of December 1 for current year.

P. December 15 - Bus Driver Credentials Report - for current year.

M. December 15 - UTREx - revised update as of December 1 for current year if significant errors are identified by the USOE or the LEA.

R277-484-4. Adjustments to Deadlines.

A. Deadlines in R277-484 that fall on a weekend or state holiday in a given year shall be moved to the first workday after the date specified for that year.

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

- (1) The reason(s) for the extension request;
- (2) The signatures of the LEA business administrator and LEA superintendent/director; and
- (3) The date by which the LEA shall submit the report.

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

(1) Take into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the need for the data to be submitted; 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 to the USOE Associate Superintendent for Business and Operations for a final decision on whether or not to stop the MSP fund transfer process.

D. If, after receiving an extension, the LEA fails to submit the report by the designated 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) CACTUS Update:
 - (a) June 29;
 - (b) November 15.
- (2) UTREx Update:
 - (a) July 7 UTREx - final comprehensive update for prior year;

(b) Seven business days after October 1 UTREx - complete update required as of October 1;

(c) October 15 UTREx - revised update as of October 1;

(d) Seven business days after December 1 UTREx - complete update required as of December 1;

(e) December 15 UTREx - revised update as of December 15.

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-3-602.5;

(2) determination of adequate yearly progress as required under the Utah Comprehensive Accountability System (UCAS); and

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

C. LEAs shall use a USOE-approved SIS to ensure compatibility with USOE data collection systems. The USOE maintains a list of approved student information systems.

(1) Prior to the USOE granting approval for an LEA to initiate or replace a student information system that was not previously approved, the LEA shall comply with the following:

(a) LEA shall send written request for approval to USOE's Director of Information Technology;

(b) LEA shall submit documentation to the USOE that the new or modified student information system is School Interoperability Framework (SIF) certified;

(c) LEA shall submit documentation to the USOE that a SIF agent can meet the UTREx specifications profile for Vertical Reporting Framework (VRF), and eTranscripts;

(d) LEA shall ensure that a new student information system can generate valid data collection by submitting an actual file to the USOE for review;

(e) LEA shall ensure that the new student information system can generate the Statewide Student Identifier (SSID) request file by submitting an actual file to the USOE for review.

(2) The USOE shall review documentation and grant or deny requests within 30 calendar days.

(3) LEA requests and approval shall be completed by January 15 of the school year prior to the year the LEA proposes to use the software for production data. Approved replacement systems shall run in parallel for a period of at least three months to a state-approved system and be able to generate duplicate reports to previously generated information.

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. Noncompliance with this requirement may result in interruption of MSP funds consistent with R277-484-8.

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 as of October 1, 2013.

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

The USOE School Finance Section shall publish by June 30 annually on its website a 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 a USOE audit report review team agrees that an adjustment is warranted by the evidence of an audit:

(1) the audit report review team shall make its determination within 60 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, consistent with procedures outlined in

R277-114, 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) appropriately inform the Board at its next regularly scheduled meeting.

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

KEY: data standards, reports, deadlines

August 7, 2013

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 Data Confidentiality and Disclosure.****R277-487-1. Definitions.**

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

B. "Classroom-level assessment data" means student scores on state-required tests, aggregated in groups of more than 10 students at the classroom level or, if appropriate, at the course level, without individual student identifiers of any kind.

C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained and owned by the USOE on all licensed Utah educators. The file includes information such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history; and
- (5) a record of disciplinary action taken against the educator.

D. "Disciplinary action" means any lesser action taken by UPPAC which does not materially affect a licensed educator's license and licensing action taken by the Board for suspension or revocation.

E. "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.

F. "LEA" means local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

G. "Student information" means materials, information, records and knowledge that an LEA possesses or maintains, or both, about individual students. Student information is broader than student records and may include information or knowledge that school employees possess or learn in the course of their duties.

H. "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. Student records shall be maintained by LEAs consistent with 20 U.S.C. Section 1232g.

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-1-401(3) which allows the Board to make rules in accordance with its responsibilities; by Section 53A-13-301(3) regarding confidentiality and required or appropriate disclosure of student records data; by Section 53A-1-607(2) regarding disclosure of student data to LEAs for assessment and accountability purposes; by Section 53A-8a-410(4) to ensure the privacy and protection of individual educator evaluation data; by Section 53A-3-602.5 regarding a school performance report requiring criterion-referenced or online computer adaptive tests to be aggregated for all students by class; by Section 53A-1-411 which directs the Board to establish procedures for administering or making available online surveys to obtain information about public education issues; and by Section 53A-6-104 which authorizes the Board to issue licenses to educators and maintain licensing information.

B. The purpose of this rule is to:

- (1) provide for appropriate review and disclosure of student assessment data on state mandated assessments as required by law;
- (2) provide for adequate and appropriate review of student

assessment data on state mandated assessments to professional education staff and parents of students;

(3) ensure the privacy of student records, as directed by law;

(4) provide an online education survey conducted with public funds for Board review and approval; and

(5) provide for appropriate protection and maintenance of educator licensing data.

R277-487-3. Confidentiality of Student Data.

A. Board Responsibilities:

(1) The Board shall develop resource materials for LEAs to train employees, aids, and volunteers of an LEA regarding confidentiality of student information and student records, as defined in FERPA.

(2) The Board shall make the materials available to each LEA.

B. LEA Responsibilities:

(1) 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. The policy should address the specific needs or priorities of the LEA.

(2) LEAs shall require password protection for all student records maintained electronically.

C. Public Education Employee and Volunteer Responsibilities:

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

(2) All public education employees, aids, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, and local laws with regard to student records.

(3) An employee, aid, or volunteer shall maintain student records in a secure and appropriate place as designated by policies of an LEA.

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

(5) An employee, aid, or volunteer shall not share, disclose, or disseminate passwords for electronic maintenance of student records.

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

(7) 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.

R277-487-4. Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS) Data, Confidentiality, and Appropriate Disclosure.

A. CACTUS maintains public, protected and private information on licensed Utah educators. Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

B. A CACTUS file shall be opened on a licensed Utah educator when:

(1) the individual initiates a USOE background check, or

(2) the USOE receives a paraprofessional license application from an LEA.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized LEA staff may change demographic data.

(2) Authorized USOE staff may update licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.

(3) Authorized employing LEA staff may update data on educator assignments for the current school year only.

D. A licensed individual may view his own personal data. An individual may not change or add data except under the following circumstances:

(1) A licensed individual may change his demographic data when renewing his license.

(2) A licensed individual shall contact his employing LEA for the purpose of correcting demographic or current educator assignment data.

(3) A licensed individual may petition the USOE for the purpose of correcting any errors in his CACTUS file.

E. Individuals currently employed by public or private schools under letters of authorization or as interns are included in CACTUS.

F. Individuals working in LEAs as student teachers are included in CACTUS.

G. Designated individuals have access to CACTUS data:

(1) Training shall be provided to designated individuals prior to granting access.

(2) Authorized USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, authorized LEA staff members may access data on individuals employed by their own LEA or data on licensed individuals who do not have a current assignment in CACTUS.

(4) Authorized LEA staff may also view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.

(5) CACTUS information belongs solely to the USOE. The USOE shall make the final determination of information included in or deleted from CACTUS.

(6) CACTUS data consistent with Section 63G-2-301(1) under the Government Records Access and Management Act are public information and shall be released by the USOE.

R277-487-5. Educator Evaluation Data.

A. The Board shall provide classroom-level assessment data to administrators and teachers. School administrators shall share information requested by parents while ensuring the privacy of individual student information and educator evaluation data.

B. Individual educator evaluation data shall be protected at the school, LEA and state levels and, if applicable, at the USOE.

C. LEAs shall designate employees who may have access to educator evaluation records.

D. LEAs may not release or disclose student assessment information that reveals educator evaluation information or records.

E. LEAs shall train employees in the confidential nature of employee evaluations and the importance of securing evaluations and records.

R277-487-6. Public Education Research Data.

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) Aggregate deidentified student assessment data are available through the USOE website. Individual student information is protected.

(3) The USOE is not obligated to fill every request for

data and has 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. In filling data requests, higher priority may be given to requests that will help improve instruction in Utah's public schools.

(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 the USOE at least 10 business days prior to the public release.

B. Student information: Requests for data that disclose student information shall be provided in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; such responses may include:

(1) individual student data that are de-identified, meaning it is not possible to trace the data to individual students;

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

(3) release of student data, with appropriate binding agreements, for state or federal accountability or for the purpose of improving instruction to specific student subgroups.

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.

R277-487-7. Public Education Survey Data.

A. The Board shall approve statewide education surveys administered with public funds through the USOE or through a contract issued by the USOE, as required under Section 53A-1-411.

B. Data obtained from USOE statewide surveys administered with public funds are the property of the Board.

C. Data obtained from USOE statewide surveys administered with public funds shall be made available as follows:

(1) Survey data made available by the Board shall protect the privacy of students in accordance with FERPA.

(2) Survey data about educators shall be available in a manner that protects the privacy of individual educators consistent with State law.

KEY: students, records, confidentiality

August 7, 2013

Notice of Continuation December 31, 2012

**Art X Sec 3
53A-13-301(3)
53A-1-401(3)
53A-1-411**

R277. Education, Administration.**R277-489. Early Intervention Program.****R277-489-1. Definitions.**

A. "Adaptive learning technology and assessments" means technology tools and software that adjust the presentation of educational material according to students' weaknesses and strengths, as indicated by student responses to questions.

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

C. "Early intervention program" means a program that provides additional instruction to kindergarten age students either as an extended period before or after school, on Saturdays, during the summer, or through other means.

D. "Enrollment" means class enrollment of not more than the student enrollment of other kindergarten classes within the school.

E. "Kindergarten readiness assessment" means an assessment based on research and data that determines a child's readiness to begin kindergarten, as determined by the school district or charter school.

F. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

G. "LEA plan" means the Early Intervention Program plan submitted by LEAs and approved and accepted for funding by the Board.

H. "Program" means the Early Intervention Program.

I. "Student learning gains" means the score a student obtains by comparing performance on a pre-test at the beginning of an intervention to the performance on a post-test at the end of an intervention (post-test score minus pre-test score equals learning gains score).

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

R277-489-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and by Section 53A-17a-167 which directs the Board to distribute funds appropriated for the Early Intervention Program, consistent with state law, to LEAs that apply for the funds.

B. The purpose of this rule is to establish criteria and procedures for application and reporting procedures to administer the early intervention program.

R277-489-3. Board/USOE Responsibilities.

A. The Board shall accept applications from LEAs for Early Intervention Programs delivered through enhanced kindergarten programs that satisfy the requirements of Section 53A-17a-167 and the provisions of this rule.

(1) The USOE shall accept applications annually beginning on June 1 for the 2012-2013 school year and April 1 in subsequent years and closing as determined by the USOE.

(2) The Board shall select charter schools with the greatest need for an enhanced kindergarten program in consultation with the State Charter School Board.

(3) The Board shall distribute funds to eligible charter schools based on a formula identifying the percentage of students in public schools and the percentage of students with the greatest need for an enhanced kindergarten program consistent with Section 53A-17a-167(4)(a).

(4) The Board shall distribute funds to eligible school districts by determining the number of students eligible to receive free lunch in the prior school year for each school district and prorating the remaining funds based on the number of students eligible to receive free lunch in each school district.

(5) All funds shall be distributed consistent with USOE established timelines.

(6) The USOE shall require pre and post-assessments

from all funded programs and year-end data.

(7) The USOE shall require year-end data and a report from funded programs.

B. The Board shall select one or more technology providers through an RFP to provide adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

(1) The USOE shall accept applications from LEAs for grants to be used to purchase Board-selected adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

(2) A school district or charter school that received a license for an adaptive learning technology in a previous school year shall be given priority to receive an equivalent license in subsequent years.

(3) The USOE shall require pre and post-assessments from all participating LEAs.

(4) The USOE shall require an annual report from all participating LEAs that assesses the impact of the adaptive learning technology and assessments or adaptive computer program for literacy instruction used by the LEA, including final testing data and student learning gain scores.

(5) The Board shall report final testing data and student learning scores regarding adaptive learning technology and assessments or adaptive computer program for literacy instruction on or before November 1, 2012 and every year thereafter to the Education Interim Committee and the Governor.

R277-489-4. LEA Responsibilities.

A. LEA applications for Early Intervention Programs shall include:

(1) names of schools for which Program funds shall be used;

(2) a description of the delivery method or methods that shall be used to serve eligible students (such as full-day kindergarten, two half-days, extra hours, summer program, or other means);

(3) a description of the evidence-based early intervention model used by the LEA;

(4) a description of how the program shall focus on age-appropriate literacy and numeracy skills;

(5) a description of how the program shall be targeted to at-risk students;

(6) a description of the assessment procedures and tools that shall be used by participating schools within the LEA; and

(7) other information as requested by the USOE.

B. LEAs may apply for grants for Board-selected adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

(1) LEA adaptive learning technology and assessments grant recipients shall use a pre-test before using the technology tools and software with early intervention kindergarten students and shall administer a post-test at the end of the year.

(2) LEAs shall prepare and submit a report to the USOE detailing final testing data including student learning gains regarding the adaptive learning technology.

(3) LEA adaptive computer program for literacy instruction for early grade interventions grant recipients shall use a pre-test before using the technology tools and software with early intervention students in kindergarten through first grade and shall administer a post-test at the end of the year.

(4) LEAs shall prepare and submit a report to the USOE detailing final testing data including student learning gains regarding the adaptive computer program for literacy instruction for early grade interventions.

C. LEAs that fail to provide complete and accurate data and reports as requested shall not receive Program funding in subsequent years.

D. An LEA may not require a student to participate in an early intervention program.

R277-489-5. Assessment, Accountability and Reporting.

A. LEAs shall use a self-selected kindergarten pre-assessment with all kindergarten students:

(1) The days used for assessment shall be consistent with R277-419-7, Pupil Accounting.

(2) The USOE may provide a model kindergarten assessment from a list of appropriate assessments.

(3) Post assessments shall be completed by LEAs prior to the ending of the school year and reported to the Board as soon as reasonably possible.

(4) Post assessment results for all kindergarten students shall provide evidence of student learning matched to the program's pre-assessments used for program placement.

B. LEAs that fail to provide complete, accurate and timely reports may not receive funding in subsequent years.

KEY: early intervention

August 7, 2013

Notice of Continuation June 15, 2012

Art X Sec 3

53A-17a-167

R277. Education, Administration.**R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program.****R277-490-1. Definitions.**

A. "Arts equipment and supplies" means musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies. This list is not exhaustive.

B. "Arts Program coordinators (coordinator)" means individuals, employed full-time, who are responsible to coordinate arts programs for the LEA (as defined in R277-490-1G) or consortium, inform arts teachers, organize arts professional development (including organizing arts local learning communities), oversee/guide/organize the gathering of assessment data, represent the LEA or consortium arts program, and provide general leadership for arts education throughout the LEA or consortium.

C. Beverley Taylor Sorenson Elementary Arts Learning Program model means a Program with the following components:

(1) a qualified arts specialist to work collaboratively with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state Fine Arts Core Curriculum; and

(2) regular collaboration between the classroom teacher and arts specialist in planning arts integrated instruction.

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

E. "Highly qualified school arts program specialist (arts specialist)" means:

(1) an educator with a current educator license and a Level 2 or K-12 specialist endorsement in the art form; or

(2) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form and who works with a mentor who holds an arts endorsement; or

(3) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre.

(4) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

F. "Independent evaluator," for purposes of this rule and Program, means an evaluator selected jointly by the Board and the Utah Arts Council through the required procurement process. The evaluator shall have experience and expertise in education programs and in the arts.

G. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and for purposes of this rule, the Utah Schools for the Deaf and the Blind.

H. "Matching funds," for purposes of this rule and Program, means funds that equal the total grant amount received by an LEA/consortium to fund an LEA/consortium arts coordinator under Section 53A-17a-162(3)(c) and R277-490-5.

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

J. "Utah Arts Council" is a state and nationally funded government entity that assists with professional development and provides direct matching grants to nonprofit organizations across the state of Utah. The Utah Arts Council also conducts programs which provide outreach services (including financial assistance) to schools, local arts councils and organizations, community centers, performing groups, and individual artists.

R277-490-2. 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 Section 53A-17a-162 which directs the Board to establish a grant program for LEAs to hire qualified arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

B. The purpose of this rule is:

(1) to implement the Beverley Taylor Sorenson Elementary Arts Learning Program model in public schools through LEAs and consortia that submit grants to hire arts specialists who are highly qualified and paid on the licensed teacher salary schedule;

(2) to distribute funds to arts specialists through LEAs to purchase supplies and equipment;

(3) to allow ten Utah school districts/consortia to hire arts coordinators;

(4) to establish partnerships within established networks with Utah higher education institutions to provide pre-service training, professional development, research and leadership for arts educators and arts education in Utah public schools; and

(5) appropriately monitor, evaluate and report programs and Program results.

R277-490-3. Arts Specialist Grant Program.

A. LEAs or consortia of LEAs may submit grant requests consistent with time lines provided in this rule.

B. LEA consortia:

(1) LEAs may form consortia to employ arts specialists appropriate for the number of students served.

(2) The LEA shall develop its proposal consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model outlined under R277-490-1C.

(3) The LEA grant shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of LEAs.

(4) The LEA grant shall explain a schedule for the specialist(s) to serve the group of schools within several LEAs similarly to an arts specialist in a single school.

(5) A consortium grant shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

C. Arts specialist grant requirements

(1) Grant programs shall be developed and submitted to the Board consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model described in R277-490-1C.

(2) Grant applications shall include documents of compliance with the collaboratively developed implementation requirements. These requirements shall be developed in consultation with a committee with representative members of stakeholder groups in the Program.

D. LEAs shall review grant applications and forward approved applications to the USOE.

E. Arts specialist timelines

(1) Continuing Beverley Taylor Sorenson schools shall complete assurances as provided by the USOE and submit to school districts by May 1, annually.

(2) New Beverley Taylor Sorenson schools shall complete applications as provided by the USOE and submit to school districts by May 1, annually.

(3) LEAs shall submit completed applications requiring funding to the USOE by May 7 annually.

(4) The Board, after close consultation with the Utah Arts Council, shall designate schools/consortia for funding no later than June 1 annually.

F. Distribution of funds for arts specialists

(1) Continuing Beverley Taylor Sorenson LEAs shall submit complete information of salaries (including benefits) of

all Beverley Taylor Sorenson specialists employed by the LEA, as requested by the USOE.

(2) The USOE shall distribute funds to continuing Beverley Taylor Sorenson LEAs annually in equal amounts per program, consistent with Section 53A-17a-162(6) and (7).

(3) The USOE shall distribute funds designated in Section 53A-17a-162(7) to additional Beverley Taylor Sorenson LEAs.

**KEY: arts program, grants, public schools
August 7, 2013
Notice of Continuation June 10, 2013**

**Art X Sec 3
53A-1-401(3)
53A-17a-162**

R277-490-4. Distribution of Funds for Arts Specialist Supplies.

A. The Board shall distribute funds for arts specialist supplies to LEAs/consortia as available.

B. LEAs shall distribute funds to participating schools as provided in the approved LEA/consortia grant and consistent with LEA procurement policies.

C. LEAs/consortia shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the school/consortium plan, this rule and the law.

D. Summary information about effective supplies and equipment shall be provided in the school/consortium evaluation of the Program.

R277-490-5. LEA/Consortia Employment of LEA/Consortia Arts Coordinators.

A. LEAs/consortia may apply for funds to employ full-time arts coordinators in their LEAs/consortium.

B. Applicants shall explain how arts coordinators will be used consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model, what requirements arts coordinators must meet, and what training will be provided by whom.

C. Applicants shall provide documentation of committed matching funds that equal the request from the LEA/consortium.

D. Preference shall be given to applicants that demonstrate in their proposed recruitment and use of coordinators diligent and creative efforts to employ arts coordinators who mirror the minority or unique populations that make up the schools in which coordinators will work.

E. The Board, following close consultation with the Utah Arts Council, shall select LEAs/consortia to receive funds under this section.

F. Funds shall be distributed to designated LEAs/consortia no later than July 1 annually.

R277-490-6. Arts Program Partnership with Utah Institutions of Higher Education for Pre-service, Professional Development, Research, and Leadership Training.

A. The Board shall work closely with the Utah Arts Council to identify interested Utah higher education institutions eligible, prepared and geographically and programmatically suited to work with identified arts specialists, arts coordinators and the schools and programs in which specialists/coordinators are employed.

B. The Board, in close partnership with the Utah Arts Council, shall determine funding and payment timelines to eligible Utah higher education institutions for designated services as appropriate and necessary.

R277-490-7. Beverley Taylor Sorenson Elementary Arts Learning Program Evaluation and Reporting.

A. The Board, in consultation with the Utah Arts Council, shall contract annually with an independent qualified evaluator through the state procurement process.

B. The Board and the Utah Arts Council shall jointly report annually to the Education Interim Committee as provided in Section 53A-17a-162(6).

R277. Education, Administration.**R277-492. Utah Science Technology and Research Initiative (USTAR) Centers Program.****R277-492-1. Definitions.**

A. "Annual report" means information and data identified under R277-492 provided by funding recipients to the USOE annually by June 30 as a requirement for continued funding of the school or school district program.

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

C. "Extended year" means either a longer contract day or a longer contract year for participating teachers.

D. "Mathematics or science teacher" means a teacher with a secondary (7-12) mathematics or science teaching assignment.

E. "School district/charter school USTAR proposal" means a written proposal, including components required by the Board, developed and submitted by a school district/charter school applying for USTAR funding.

F. "STEM" means science, technology, engineering and mathematics.

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

H. "USTAR" means Utah Science Technology and Research.

I. "USTAR Program" means student and teacher opportunities to broaden their knowledge and experiences within STEM fields.

J. "Weighted Pupil Unit (WPU)" means the basic state funding unit.

R277-492-2. 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 Section 53A-17a-159 which appropriates funding to establish extended contracts for mathematics and science teachers as part of the Utah Science Technology and Research (USTAR) Centers Initiative. The USOE shall provide statewide supervision of the program and budget and shall recommend funding for USTAR programs based on USTAR objectives, Board funding priorities and available funds.

B. This rule establishes standards and procedures to direct recipient public school districts or charter schools to develop proposals that create USTAR Centers that will enhance their ability to retain mathematics and science teachers while simultaneously offering more opportunities for students and more effectively using capital facilities.

R277-492-3. USTAR Proposal Criteria.

A. A school district/charter school shall first identify the purpose or goal(s) of its USTAR proposal.

B. Appropriate purposes may include:

- (1) improvement in student test scores;
- (2) satisfaction of specific academic goals for all students or various groups of students;
- (3) increased retention of licensed educators in specific areas;
- (4) improved school climate;
- (5) increased opportunities for students to take remedial or college preparation courses;
- (6) increased student enrollment in identified courses;
- (7) additional opportunities for students to learn about specific or general higher education or career opportunities in math or science fields; or
- (8) other purposes consistent with Section 53A-17a-159(1)(b).

C. A school district/charter school shall provide a school schedule showing how it will extend hours of the school day (Section 53A-17a-159(1)(b)(ii)) or days of the school year (Section 53A-17-a-159(1)(b)(ii)) to maximize employee and

facility resources in furtherance of the proposal's goals.

D. The USTAR proposal shall explain how employees shall be used in the extended school day or expanded school year to maximize their effectiveness with students, including how various groups of employees will participate including classified employees, licensed employees, and appropriate supervisors for all groups. Though various school employee groups may be necessary or desirable to achieve the purposes of the proposal, the proposal shall use USTAR grant funds only to pay for hours or days worked by science or mathematics teachers with valid, current Utah educator licenses.

E. The USTAR proposal shall identify the number of designated employees that will participate in the expanded year or extended day program with the understanding that USTAR grant funds may only be used for licensed mathematics and science teachers.

F. The USTAR proposal shall identify the compensation that all necessary employees shall receive, including increased insurance and benefit costs, if appropriate; compensation may be determined by groups of employees or by individual employees.

G. The USTAR proposal shall identify how licensed educators will be evaluated for the extended hours or expanded days worked.

H. The USTAR proposal shall include a budget section, including anticipated costs and narrative.

I. The USTAR proposal shall include an evaluation component that provides opportunities for student, employee and parent participation in the assessment of the proposal's effectiveness. Proposals shall provide for evaluations of program effectiveness at least annually, beginning in July, 2009.

R277-492-4. Board/USOE Responsibilities.

A. The USOE shall carry out the responsibilities of the Board consistent with the Board's review and direction.

B. The USOE shall solicit proposals from school districts/charter schools to participate in the USTAR grant program.

C. Proposals shall be due to the USOE by June 2, 2008.

(1) The USOE will work with applicants that submit proposals early to improve proposals to the extent of resources and time available.

(2) The USOE shall deliver final charter school proposals to the State Charter School Board for Review and recommendation.

D. The USOE shall receive a consolidated request from the State Charter School Board consistent with Section 53A-17a-159(4) by June 20, 2008. The State Charter Board and State Charter Board staff shall work with charter school applicants that submit proposals early to improve proposals to the extent of resources and time available.

E. The USOE shall receive all proposals from school districts, considering the consolidated request submitted by the State Charter Board as a proposal from one school district, and rank them on an objective scale or rubric prepared by the USOE.

F. The Board may appoint an expert review panel to prioritize proposals and recommend proposals for funding.

G. The expert review panel or the USOE or both shall consider the priorities of Section 53A-17a-159(5) in recommending and selecting the recipients:

(1) rural, urban, large, small, growing and declining school districts (considering the consolidated charter request as one school district) having unique circumstances;

(2) as many pilot programs shall be funded as possible; and

(3) funded proposals should address the objectives and benefits of Section 53A-17a-159(1)(b).

H. The Board shall review recommendations, make final

decisions for funding and notify applicants that receive funding no later than July 31, 2008.

I. The USOE shall provide funds to school districts/charter schools (or the consolidated charter recipient) consistent with USOE distribution practices for grants.

R277-492-5. School District/Charter School Consolidated Proposal Responsibilities.

A. School districts shall submit proposals that meet the standards of R277-717-3 and Section 53A-17a-159 no later than June 2, 2008.

B. The State Charter Board shall complete its work under Section 53A-17a-159(4) and submit its consolidated request to the USOE no later than June 20, 2008.

C. School district and charter school proposals shall clearly demonstrate that all participants necessary for the success of a proposal are voluntary participants and understand the requirements of their participation.

D. School district and charter school participants shall demonstrate parent and community notification and support of the school district/charter school proposals.

E. Proposals shall clearly demonstrate that at least 95 percent of allocated funds shall be used for extended licensed mathematics and science teacher contracts.

F. Proposals shall clearly demonstrate that the remaining five percent of allocated funds is used only for purposes identified under Section 53A-17a-159(6)(b).

G. Funded school districts and charter schools shall provide all required evaluations to the USOE as identified by their proposals consistent with USOE timelines.

H. Funded school districts and charter schools shall provide information as requested by the USOE during the time periods identified in the proposals, including allowing for visits of USOE staff and review of student work or assessments.

R277-492-6. Final Decision-making and Reporting Requirements.

A. The Board's decisions for funding are final.

B. The USOE may request additional information, data or budget information if annual reports or student assessments indicate that USTAR funding is being used ineffectively, for ineligible employees or inconsistently with the school district/charter school proposal or the intent of the law or this rule.

C. The USOE may interrupt USTAR funding to school districts/charter schools that do not meet timelines required by this rule or that do not provide complete information or evaluations required under this rule.

D. The Board shall provide annual reports to Legislative committees as required by Section 53A-17a-159(8)

**KEY: science, technology, research, USTAR
August 7, 2008**

Notice of Continuation August 2, 2013

**Art X Sec 3
53A-1-401(3)
53A-17a-159**

R277. Education, Administration.**R277-526. Paraeducator to Teacher Scholarship Program.****R277-526-1. Definitions.**

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

B. "Paraeducator" for purposes of this rule means a school employee who:

(1) delivers instruction under the direct supervision of a teacher; and

(2) works in an area where there is a shortage of qualified teachers, such as special education, Title I, English as a Second Language, reading remediation, math, or science.

C. "Paraeducator Scholarship Selection Committee (Committee)" means the committee established by the Board to select scholarship recipients.

D. "Scholarship" for purposes of this rule means funds provided by the Board directly to a paraeducator to pay only for the actual and documented costs for tuition toward an associate's or a bachelor's degree.

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

R277-526-2. 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 Section 53A-6-802(8) which requires the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.

B. The purpose of this rule is to distribute funds to paraeducators seeking to become licensed educators and to establish application and accountability procedures to provide funding to prospective educators directly and fairly.

R277-526-3. Scholarship Amounts and Requirements.

A. A paraeducator stipend awarded under this rule shall be used solely and completely for expenses approved by Section 53A-6-802 and this rule between July 1, 2008 and June 30, 2009.

B. A scholarship recipient shall remain continuously employed, consistent with the employment agreement and Section 53A-6-802(7).

C. A scholarship recipient shall provide documentation of progress toward graduation, as requested by the employer or the Board.

D. A scholarship recipient who does not remain employed for the duration of the scholarship period or who does not satisfactorily complete funded courses may be responsible to reimburse the Board for the amount of scholarship funding.

E. The Committee shall determine funding for applicants from applications received from school districts and charter schools after considering the number of applications received and the amount of funding available.

F. The Committee may develop and consider selection criteria including:

(1) support from the recommending school districts/charter schools; and

(2) geographical distribution of recipients.

R277-526-4. Applicant Scholarships Recipient and School District/Charter School Responsibilities.

A. Scholarship recipients shall be employed for a minimum of 10 hours per week by a public school district or charter school at the time of application for the Paraeducator Scholarship or during the 2008-09 school year.

B. Scholarship applicants shall submit completed applications found on the USOE website or available from the USOE in person or by mail to their employers no later than June 15, 2008.

C. Applicants shall provide information about tuition

expenses only on the completed application based on the most recent information available from the Utah institution of higher education to which the applicant has either been admitted or made application.

D. School districts and charter schools shall rank completed applications of qualified paraeducators within the school district or charter school in priority order and submit all applications to the USOE on or before July 1, 2008.

E. Scholarship recipients and school districts/charter schools whose employees receive funding shall cooperate on any assessment required by the Board.

R277-526-5. State Board of Education Staff/Committee Responsibilities.

A. The Board shall establish a Paraeducator Scholarship Selection Committee and working procedures for the Committee consistent with 53A-6-802(4) by May 15, 2008.

B. The Committee shall consist of:

(1) one Board member designated by the Board;

(2) one representative of the Board of Regents designated by the Board of Regents;

(3) one representative of the largest parent/teacher association in the state;

(4) no more than two additional representatives designated by the Board consistent with Section 53A-6-802(4).

C. The Committee shall receive completed and ranked applications from school districts and charter schools consistent with R277-526-4.

D. The Committee shall identify recipients for funding based on criteria of Section 53A-6-802 (4)(d).

E. The Committee shall provide names of scholarship recipients to the Board for review and comment by August 1, annually.

F. The Committee or the Board may require a summary assessment of the increased number of paraeducators who become educators and other program results from participating scholarship recipients, school districts, and charter schools.

KEY: paraeducators, scholarships**August 7, 2008****Notice of Continuation August 2, 2013****Art X Sec 3****53A-1-401(3)****53A-6-802(8)**

R277. Education, Administration.**R277-602. Special Needs Scholarships - Funding and Procedures.****R277-602-1. Definitions.**

A. "Agreed upon procedure" for purposes of this rule means the agreed upon procedure as provided for under Section 53A-1a-705(1)(b)(i)(B).

B. "Annual assessment" for purposes of this rule means a formal testing procedure carried out under prescribed and uniform conditions that measures students' academic progress, consistent with Section 53A-1a-705(1)(f).

C. "Appeal" for purposes of the rule means an opportunity to discuss/contest a final administrative decision consistent with and expressly limited to the procedures of this rule.

D. "Assessment team" means the individuals designated under Section 53A-1a-703(1).

E. "Audit of a private school" for purposes of this rule means a financial audit provided by an independent certified public accountant, as provided under Section 53A-1a-705(1)(b).

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

G. "Days" means school days unless specifically designated otherwise in this rule.

H. "Disclosure to parents" for purposes of this rule means the express acknowledgments and acceptance required under Section 53A-1a-704(5) as part of parent application available through schools districts.

I. "Eligible student" for purposes of this rule means:

(1) the student's parent resides in Utah;

(2) the student has a disability as designated in 53A-1a-704(2)(b); and

(3) the student is school age.

(4) Eligible student also means that the student was enrolled in a public school in the school year prior to the school year in which the student will be enrolled in a private school, has an IEP and has obtained acceptance for admission to an eligible private school; and

(5) The requirement to be enrolled in a public school in the year prior and have an IEP does not apply if:

(a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and

(b) an assessment team is able to readily determine with reasonable certainty that the student has a disability and would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the student enrolled in a public school.

J. "Enrollment" for purposes of this rule means that the student has completed the school enrollment process, the school maintains required student enrollment information and documentation of age eligibility, the student is scheduled to receive services at the school, the student attends regularly, and has been accepted consistent with R277-419 and the student's IEP.

K. "Final administrative action" for purposes of this rule means the concluding action under Section 53A-1a-701 through 53A-1a-710 and this rule.

L. "Individual education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Board Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

M. "Private school that has previously served students with disabilities" means a school that:

(1) has enrolled students within the last three years under the special needs scholarship program;

(2) has enrolled students within the last three years who have received special education services under Individual Services Plans (ISP) from the school district where the school is

geographically located; or

(3) can provide other evidence to the Board that is determinative of having enrolled students with disabilities within the last three years.

N. "Special Needs Scholarship Appeals Committee (Appeals Committee)" means a committee comprised of:

(1) the special needs scholarship coordinator;

(2) the USOE Special Education Director;

(3) one individual appointed by the Superintendent or designee; and

(4) two Board-designated special education advocates.

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

P. "Warrant" means payment by check to a private school.

R277-602-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, Section 53A-1a-706(5)(b) which provides for Board rules to establish timelines for payments to private schools, Section 53A-3-410(6)(b)(i)(c) which provides for criminal background checks for employees and volunteers, Section 53A-1a-707 which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to outline responsibilities for parents/students, public schools, school districts or charter schools, and eligible private schools that accept scholarships from special needs students and the State Board of Education in providing choice for parents of special needs students who choose to have their children served in private schools and in providing accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-3. Parent/Guardian Responsibilities.

A. If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application, available from the USOE or online, to the school district or charter school within which the parent/guardian resides.

(1) The parent shall complete all required information on the application and submit the following documentation with the application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age before September 2 of the year of enrollment, consistent with Section 53A-3-402(6);

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705;

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

B. If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application to the school district in which the private school is geographically located (school

district responsible for child find under IDEA, Sec. 612(a)(3)).

(1) The parent shall complete all required information on the application and submit the following documentation with application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age, before September 2 of the year of enrollment;

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705.

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) The parent shall participate in an assessment team meeting to determine if a student would qualify for special education services and the level of services for which the student would be eligible if enrolled in a public school.

C. Payment provisions - Upon review and receipt of documentation that verifies a student's admission to, or continuing enrollment and attendance at, a private school, the Board shall make scholarship payments quarterly in equal amounts in each school year in which a scholarship is in force.

D. A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6).

E. The parent shall, consistent with Section 53A-1a-706(8), endorse the warrant received by the private school from the USOE no more than 15 school days after the private school's receipt of the warrant.

F. The parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student or the student misses more than 10 consecutive days at which point the Board may modify the payment to the private school consistent with R277-419-1J.

G. The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

H. The parent shall notify the Board in writing by March 1 annually to indicate the student's continued enrollment.

R277-602-4. School District or Charter School Responsibilities.

A. The school district or charter school that receives the student's scholarship application consistent with Section 53A-1a-704(4) shall forward applications to the Board no more than 10 days following receipt of the application.

B. The school district or charter school that received the student's scholarship application shall:

(1) receive applications from students/parents;

(2) verify enrollment of the student seeking a scholarship in previous school year within a reasonable time following contact by the Board;

(3) verify the existence of the student's IEP and level of service to the USOE within a reasonable time;

(4) provide personnel to participate on an assessment team to determine:

(a) if a student who was previously enrolled in a private school that has previously served students with disabilities would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Section 53A-1a-706(2);

(b) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

C. Special needs scholarship students shall not be enrolled in public or charter schools for dual enrollment or extracurricular activities, consistent with the parents'/guardians' assumption of full responsibility for students' services under Section 53A-1a-704(5).

D. School districts and charter schools shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

E. School district and charter school notification to students with IEPs:

(1) School districts and charter schools shall provide written notice to parents or guardians of students who have an IEP of the availability of a scholarship to attend a private school through the Special Needs Scholarship Program through state special education monitoring procedures.

(2) The written notice shall consist of the following statement: School districts and charter schools are required by Utah law, 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

(3) The written notice shall be provided no later than 30 days after the student initially qualifies for an IEP.

(4) The written notice shall be provided annually no later than February 1 to all students who have IEPs.

(5) The written notice shall include the address of the Internet website maintained by the Board that provides prospective applicants and their parents with program information and application forms for the Carson Smith Scholarship Program.

(6) A school district, school within a school district, or charter school that has an enrolled student who has an IEP shall post the address of the Carson Smith Internet website maintained by the Board on the school district's or school's website, if the school district or school has one.

R277-602-5. State Board of Education Responsibilities.

A. The Board shall provide applications, containing acknowledgments required under Section 53A-1a-704(5), for parents seeking a special needs scholarship online, at the Board offices, at school district or charter school offices, and at charter schools no later than April 1 prior to the school year in which admission is sought.

B. The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 days after the private school submits an application and completed documentation of eligibility. The Board may:

(1) provide reasonable timelines within the application for satisfaction of private school requirements;

(2) issue letters of warning, require the school to take corrective action within a time frame set by the Board, suspend the school from the program consistent with Section 53A-1a-708, or impose such other penalties as the Board determines appropriate under the circumstances.

(3) establish appropriate consequences or penalties for private schools that:

(a) fail to provide affidavits under Section 53A-1a-708;

(b) fail to administer assessments, fail to report assessments to parents or fail to report assessments to assessment team under Section 53a-1a-705(1)(f);

(c) fail to employ teachers with credentials required under Section 53A-1a-705(g);

(d) fail to provide to parents relevant credentials of teachers under Section 53A-1a-705(h);

(e) fail to require completed criminal background checks

under Section 53A-3-410(2) and (3) and take appropriate action consistent with information received.

(4) initiate complaints and hold administrative hearings, as appropriate, and consistent with R277-602.

C. The Board shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

D. Information about approved scholarships and availability and level of funding shall be provided to scholarship applicant parents/guardians no later than March 1 of each year.

E. The Board shall mail scholarship payments directly to private schools as soon as reasonably possible consistent with Section 53A-1a-706(8).

F. If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Section 53A-1a-706(1)(c)(i).

G. The Board shall verify and cross-check, using USOE technology services, special needs scholarship student enrollment information consistent with Section 53A-1a-706(7).

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

A. Private schools shall submit applications by March 1 prior to the school year in which it intends to enroll scholarship students.

B. Applications and appropriate documentation from private schools for eligibility to receive special needs scholarship students shall be provided to the USOE on forms designated by the USOE consistent with Section 53A-1a-705(3).

C. Private schools shall satisfy criminal background check requirements for employees and volunteers consistent with Section 53A-3-410.

D. Private schools that seek to enroll special needs scholarship students shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Sections 53A-1a-704(3) and 53A-1a-704(6).

(1) Meetings shall be scheduled at times and locations mutually acceptable to private schools, applicant parents and participating public school personnel.

(2) Designated private school and public school personnel shall maintain documentation of the meetings and the decisions made for the students.

(3) Documentation regarding required assessment team meetings, including documentation of meetings for students denied scholarships or services and students admitted into private schools and their levels of service, shall be maintained confidentially by the private and public schools, except the information shall be provided to the USOE for purposes of determining student scholarship eligibility, or for verification of compliance upon request by the USOE.

E. Private schools receiving scholarship payments under this rule shall provide complete student records in a timely manner to other private schools or public schools requesting student records if parents have transferred students under Section 53A-1a-704(7).

F. Private schools shall notify the Board within five days if the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student or the student misses more than 10 consecutive days of school.

G. Private schools shall satisfy health and safety laws and codes under Section 53A-1a-705(1)(d) including:

(1) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety

emergencies and

(2) compliance with R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

H. An approved eligible private school that changes ownership shall submit a new application for eligibility to receive Carson Smith scholarship payments from the Board; the application shall demonstrate that the school continues to meet the eligibility requirements of R277-602.

(1) The application for renewed eligibility shall be received from the school within 60 calendar days of the change of ownership.

(2) Ownership changes on the date that an agreement is signed between previous owner and new owner.

(3) If the application is not received by the USOE within the 60 days, the new owner/school is presumed ineligible to receive continued Carson Smith scholarship payments from the USOE and, at the discretion of the Board, the USOE may reclaim any payments made to a school within the previous 60 days.

(4) If the application is not received by the USOE within 60 days after the change of ownership, the school is not an eligible school and shall submit a new application for Carson Smith eligibility consistent with the requirements and timelines of R277-602.

R277-602-7. Special Needs Scholarship Appeals.

A. A parent or legal guardian of an eligible student or a parent or legal guardian of a prospective eligible student may appeal only the following actions under this rule:

(1) alleged USOE violations of Section 53A-1a-701 through 710 or R277-602; or

(2) alleged USOE violations of required timelines.

B. The Appeals Committee may not grant an appeal contrary to the statutory provisions of Section 53A-1a-701 through 53A-1a-710.

C. An appeal shall be submitted in writing to the USOE Special Needs Scholarship Coordinator at: Utah State Office of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200.

(1) The appeal opportunity is expressly limited to an appeal submitted in writing for USOE consideration. The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.

(2) Appellants have no right to additional elements of due process beyond the specific provisions of this rule.

(3) Nothing in the appeals process established under R277-602 shall be construed to limit, replace or adversely affect parental appeal rights available under IDEA.

D. Appeals shall be made within 15 days of written notification of the final administrative decision.

E. Appeals shall be considered by the Appeals Committee within 15 days of receipt of the written appeal.

F. The decision of the Appeals Committee shall be transmitted to parents no more than ten days following consideration by the Appeals Committee.

G. Appeals shall be finalized as expeditiously as possible in the joint interest of schools and students involved.

H. The Appeals Committee's decision is the final administrative action.

KEY: special needs students, scholarships

August 7, 2013

Notice of Continuation June 10, 2013

Art X Sec 3

53A-1a-706(5)(b)

53A-3-410(6)(i)(c)

53A-1a-707

53A-1-401(3)

R277. Education, Administration.**R277-609. Standards for School District, School and Charter School Discipline Plans.****R277-609-1. Definitions.**

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

B. "Bullying" means intentionally or knowingly committing an act that:

(1)(a) endangers the physical health or safety of a school employee or student;

(b) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(c) involves consumption of any food, liquor, drug, or other substance;

(d) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(e) involves physically obstructing a school employee's or student's freedom to move; and

(2) is done for the purpose of placing a school employee or student in fear of:

(a) physical harm to the school employee or student; or

(b) harm to property of the school employee or student.

(3) The conduct described in R277-609-1B constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

C. "Cyber-bullying" means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

D. "Discipline" means:

(1) Imposed discipline: Code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives; and

(2) Self-Discipline: A personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

E. "Disruptive student behavior" includes:

(1) the grounds for suspension or expulsion described in Section 53A-11-904; and

(2) the conduct described in Section 53A-11-908(2)(b).

F. "Harassment" means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual.

G. "Hazing" means intentionally or knowingly committing an act that:

(1)(a) endangers the physical health or safety of a school employee or student;

(b) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(c) involves consumption of any food, liquor, drug, or other substance;

(d) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(e) involves physically obstructing a school employee's or student's freedom to move; and

(f)(i) is done for the purpose of initiation or admission into, affiliation with, holding office in, or as a condition for, membership or acceptance, or continued membership or acceptance, in any school or school sponsored team, organization, program, or event; or

(ii) if the person committing the act against a school

employee or student knew that the school employee or student is a member of, or candidate for, membership with a school, or school sponsored team, organization, program, or event to which the person committing the act belongs to or participates in.

(2) The conduct described in R277-609-1G constitutes hazing, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

H. "Plan" means a school district-wide and school-wide written model for prevention and intervention for student behavior management and discipline procedures for students who habitually disrupt school environments and processes.

I. "Policy" means standards and procedures that include the provisions of Section 53A-11-901 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that defines hazing, bullying, cyber-bullying, and harassment, prohibits hazing and bullying, requires annual discussion and training designed to prevent hazing, bullying, cyber-bullying, and harassment among school employees and students, and provides for enforcement through employment action or student discipline.

J. "Retaliate or retaliation" means an act or communication intended:

(1) as retribution against a person for reporting bullying or hazing; or

(2) to improperly influence the investigation of, or the response to, a report of bullying or hazing.

K. "Qualifying minor" means a school-age minor who:

(1) is at least nine years old; or

(2) turns nine years old at any time during the school year.

L. "School" means any public elementary or secondary school or charter school.

M. "School board" means:

(1) a local school board; or

(2) a local charter board.

N. "School employee" means:

(1) school teachers;

(2) school staff;

(3) school administrators; and

(4) all others employed, directly or indirectly, by the school, school board, or school district.

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

R277-609-2. 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 allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-402(1)(b) which requires the Board to establish rules concerning discipline and control, Section 53A-15-603 which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction, and Section 53A-11-901 which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

B. The purpose of this rule is to define hazing, bullying, cyber-bullying, and harassment and outline requirements for school discipline plans and policies which school districts and charter schools shall meet.

R277-609-3. School District, School and Charter School Responsibility to Develop Plans.

A. Each school district, or school and each charter school shall develop and implement a board approved comprehensive school district, school or charter school plan or policy for

student and classroom management, and school discipline. The plan shall include:

- (1) the definitions of Section 53A-11-910;
- (2) written standards for student behavior expectations, including school and classroom management;
- (3) effective instructional practices for teaching student expectations, including self-discipline, citizenship, civic skills, and social skills;
- (4) systematic methods for reinforcement of expected behaviors and uniform methods for correction of student behavior;

(5) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(6) an ongoing staff development program related to development of student behavior expectations, effective instructional practices for teaching and reinforcing behavior expectations, effective intervention strategies, and effective strategies for evaluation of the efficiency and effectiveness of interventions;

(7) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;

(8) policies to define, prohibit, and intervene in bullying, including cyber-bullying, including the requirement of awareness and intervention strategies, including training for social skills, for students, parents, and school staff. The policies shall:

(a) provide for training specific to overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;

(b) provide for training specific to relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;

(c) provide training and education specific to bullying based upon students':

(i) actual or perceived identities;

(ii) conformance or failure to conform with stereotypes.

(d) provide for training specific to cyber-bullying, including use of email, web pages, text messaging, instant messaging, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

(e) provide for student assessment of the prevalence of bullying in school districts, schools and charter schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas;

(f) complement existing safe and drug free school policies and school harassment and hazing policies;

(g) include required strong responsive action against retaliation including assistance to harassed students and their parents in reporting subsequent problems and new incidents; and

(h) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training.

B. The plan shall also provide direction to school districts for dealing with disruptive students. This part of the plan shall:

(1) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;

(2) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior; and

(3) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court.

C. School district or school plans or sections of plans,

including directives about bullying and disruptive students, shall also:

(1) include strategies to provide for necessary adult supervision;

(2) be clearly written and consistently enforced; and

(3) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

D. Plans required under R277-609-3 shall include gang prevention and intervention policies.

(1) The required plans shall account for an individual school or school district's unique needs or circumstances.

(2) The required plans may include the provisions of Section 53A-15-603(2).

(3) The required plans may provide for publication of notice to parents and school employees of policies by reasonable means.

R277-609-4. Implementation.

A. School districts, schools and charter schools shall implement strategies and policies consistent with their plans.

B. School districts, schools and charter schools shall develop, use and monitor a continuum of intervention strategies to assist students whose behavior in school falls repeatedly short of reasonable expectations, including teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.

C. As part of any suspension or expulsion process that results in court involvement, once a school district, school or charter school receives information from the courts that disruptive student behavior will result in court action, the school district, school or charter school shall provide a formal written assessment of habitually disruptive students. Assessment information shall be used to connect parents and students with supportive school and community resources.

D. Nothing in state law or this rule restricts local districts/charter schools from implementing policies to allow for suspension of students of any age consistent with due process and with all requirements of Individuals with Disabilities Education Act 2004.

R277-609-5. Parent/Guardian Notification and Court Referral.

A. Through school administrative and juvenile court referral consequences, school district, and school and charter school policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

B. Policies shall provide for notice to parents and information about resources available to assist parents in resolving school-age minors' disruptive behavior.

C. Policies shall provide for notices of disruptive behavior to be issued by schools to qualifying minor(s) and parent(s) consistent with:

(1) numbers of disruptions and timelines in accordance with Section 53A-11-910;

(2) school resources available; and

(3) cooperation from the appropriate juvenile court in accessing student school records, including attendance, grades, behavioral reports and other available student school data.

D. Policies shall provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

R277-609-6. USOE Model Policies.

The USOE shall develop, review regularly, and provide to local school boards and charter school governing boards model policies to address disruptive student behavior and appropriate consequences.

KEY: disciplinary actions, disruptive students

July 11, 2011

Notice of Continuation August 2, 2013

Art X Sec 3

53A-1-401(3)

53A-1-402(1)

53A-15-603

53A-11-901

R277. Education, Administration.**R277-613. School District and Charter School Bullying and Hazing Policies and Training.****R277-613-1. Definitions.**

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

B. "Bullying" means intentionally or knowingly committing an act that:

(1)(a) endangers the physical health or safety of a school employee or student;

(b) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(c) involves consumption of any food, liquor, drug, or other substance;

(d) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(e) involves physically obstructing a school employee's or student's freedom to move; and

(2) is done for the purpose of placing a school employee or student in fear of:

(a) physical harm to the school employee or student; or

(b) harm to property of the school employee or student.

(3) The conduct described in R277-613-1B constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

C. "Cyber-bullying" means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

D. "Harassment" means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual.

E. "Hazing" means intentionally or knowingly committing an act that:

(1)(a) endangers the physical health or safety of a school employee or student;

(b) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(c) involves consumption of any food, liquor, drug, or other substance;

(d) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(e) involves physically obstructing a school employee's or student's freedom to move; and

(f)(i) is done for the purpose of initiation or admission into, affiliation with, holding office in, or as a condition for, membership or acceptance, or continued membership or acceptance, in any school or school sponsored team, organization, program, or event; or

(ii) if the person committing the act against a school employee or student knew that the school employee or student is a member of, or candidate for, membership with a school, or school sponsored team, organization, program, or event to which the person committing the act belongs to or participates in.

(2) The conduct described in R277-613-1E constitutes hazing, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

F. "Policy" means standards and procedures that include the provisions of Section 53A-11-901 and additional standards,

procedures, and training adopted in an open meeting by a local board of education or charter school board that define hazing and bullying, prohibit hazing and bullying, require annual discussion and training designed to prevent hazing and bullying among school employees and students and provide for enforcement through employment action or student discipline.

G. "Retaliate or retaliation" means an act or communication intended:

(1) as retribution against a person for reporting bullying or hazing; or

(2) to improperly influence the investigation of, or the response to, a report of bullying or hazing.

R277-613-2. 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 allows the Board to adopt rules in accordance with its responsibilities, and the responsibility of the Board to provide assistance with and ensure school district/charter school compliance with Section 53A-11a-301.

B. The purpose of the rule is to require school districts and charter schools to implement bullying and hazing policies district and school wide, to provide for regular and meaningful training of school employees and students and to provide for enforcement of the policies in schools, at the state level and in public school athletic programs.

R277-613-3. Utah State Board of Education Responsibilities.

A. To the extent of resources available, the Board shall provide training opportunities or materials or both for employees of school districts and charter schools on bullying, including cyber-bullying, and hazing.

B. The Board may interrupt disbursements of funds consistent with Section 53A-1-401(3) for failure of a school district or charter school to comply with this rule.

R277-613-4. Local School District and Charter School Responsibilities.

A. Each school district and charter school shall implement a policy prohibiting bullying and hazing consistent with Section 53A-11a-301.

B. Each school district and charter school shall:

(1) post a copy of its policy on the school district/charter school website; and

(2) provide a copy of the school district/charter school policy or uniform resource locator (URL) to the State Superintendent of Public Instruction at the Utah State Office of Education.

C. The local board/charter school board shall annually review and immediately post the policy following the first board meeting of the school year.

D. Policies shall provide for training to students, staff, and volunteers consistent with the following:

(1) training specific to overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;

(2) training specific to relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;

(3) training specific to prohibitions against bullying or hazing of a sexual nature or with sexual overtones;

(4) training specific to cyber-bullying, including use of email, web pages, text messaging, instant messaging, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

E. Policies shall also:

(1) complement existing safe and drug free school policies and school harassment and hazing policies;

(2) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training; and

(3) include required strong responsive action against retaliation including assistance to harassed students and their parents in reporting subsequent problems and new incidents.

F. The policy shall also provide direction to employees about bullying and dealing with disruptive students. This part of the policy shall:

(1) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;

(2) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior;

(3) designate to whom notices shall be provided;

(4) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court;

(5) include strategies to provide for necessary adult supervision;

(6) be clearly written and consistently enforced;

(7) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility; and

(8) provide notice to employees that violation(s) of this rule may result in employment discipline or action.

July 11, 2011

Notice of Continuation August 2, 2013

Art X Sec 3
53A-1-401(3)
53A-11a-301

R277-613-5. Training by School Districts and Charter Schools Specific to Participants in Public School Athletic Programs and School Clubs.

A. Prior to any student or employee or volunteer coach participating in a public school sponsored athletic program, both curricular and extracurricular, or extracurricular club or activity, a student or coach shall participate in bullying and hazing prevention training.

B. School districts and charter schools may collaborate with the Utah High School Activities Association to develop and provide training.

C. Student athletes and extracurricular club members shall be informed of prohibited activities under this rule and notified of potential consequences for violation of the law or the rule or both.

D. School districts and charter schools that offer athletics shall provide annual training to all new students and new employees and require refresher training for all students and employees at least once every three years.

E. Training curriculum outlines, training schedules, and participant lists or signatures shall be maintained by each school or school district and provided to the Utah State Office of Education upon request.

R277-613-6. Professional Responsibilities of Employee and Volunteer Coaches.

A. All public school coaches shall act consistent with professional standards of R277-515 in all responsibilities and activities of their assignments.

B. Failure to act consistently with R277-515 toward students, colleagues and parents may result in discipline against an educator's license or termination of volunteer services.

KEY: bullying, hazing, policies, training

R277. Education, Administration.**R277-617. Smart School Technology Program.****R277-617-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Independent Evaluating Committee" means the committee established under Section 53A-1-709(5).
- C. "Smart School Technology Program (Program)" means a three-year program developed by a selected technology provider for a customized whole-school technology deployment plan individualized for each school selected by the Board.
- D. "Technology," for purposes of this rule, means technology provided as examples under Section 53A-1-709(7) or other technology approved by the independent evaluating committee.
- E. "USOE" means the Utah State Office of Education.

R277-617-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, by Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-709(8)(d) that directs the Board to make rules specifying procedures and criteria to be used for selecting schools that may participate in the Program.
- B. The purpose of this rule is to provide criteria and procedures for the Board to select schools to participate in the Smart School Technology Program.

R277-617-3. School Selection Criteria.

- A. Public schools that include any combination of grades K-12 shall be eligible for the Program
- B. An applicant school shall provide a technology implementation plan with its application. At a minimum, the plan shall:
- (1) identify technology (or technologies) that the school will employ;
 - (2) estimate numbers of technology devices needed based on numbers of students expected to be in the school for identified school years;
 - (3) explain, including explaining the use of technology and providing supporting documentation, about how technology will support the improvement of student achievement with respect to the core curriculum;
 - (4) explain how technology will improve students' skill using technology;
 - (5) explain what filtering devices or protections will be used by the school to protect students from inappropriate technology use and sites;
 - (6) agree that the school will provide all data and information required by the USOE for evaluation purposes, as requested by the USOE;
 - (7) explain the current technology capabilities and equipment available at the applicant school; and
 - (8) provide additional information requested by the USOE on the application.

R277-617-4. Required Matching Funds.

- A. The USOE application form will provide specific information about the level or amount of matching funds or resources that the school must provide and when the matching funds must be available.
- B. The application shall explain how the school or LEA will provide matching funds to satisfy the requirement of Section 53A-1-709 (8)(d) for matching funds.
- C. The applicant school shall assure the USOE that it will meet the requirement for matching local funds through the duration of the Program or may be obligated to repay the state funds to the USOE.

R277-617-5. School Selection and Evaluation.

- A. The USOE shall provide an application for the Program before May 15, 2013.
- B. Completed applications shall be returned to the USOE before June 1, 2013.
- C. The USOE shall screen all applications for compliance with all state laws, R277-617 and application requirements.
- D. The USOE shall seek the participation and advice of the independent evaluating committee in selecting final applications to recommend for funding. The Board shall make final school selections.
- E. To the extent possible, selected applicants shall represent geographic, economic and demographic diversity, in addition to other criteria provided in the USOE application.
- F. Funded applicants shall be selected and notified before June 30, 2013.
- G. Selection timelines may be modified by mutual agreement between the USOE and the independent evaluating committee.
- H. The Board and the education technology provider shall evaluate the Program consistent with Section 53A-1-709(9).

KEY: schools, technology**August 7, 2013****Notice of Continuation June 10, 2013****Art X Sec 3
53A-1-401(3)
53A-1-709(8)(d)**

R277. Education, Administration.**R277-619. Student Leadership Skills Development.****R277-619-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Matching funds" means an amount of funds or services that shall be provided by an applicant in the Board application to meet the match requirement of Section 53A-17a-169(5)(a).
- C. "Student leadership skills development" means a program to develop students' behaviors and skills vital for learning and career success and that will enhance a school's learning environment.
- D. "USOE" means the Utah State Office of Education.

R277-619-2. 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-17a-169(4) which directs the Board to make rules for elementary school participation in this pilot grant program, 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 criteria, procedures and timelines for the Board to designate schools and grant awards to facilitate elementary school participation in the pilot Student Leadership Skills Development program.

R277-619-3. School Selection Criteria.

- A. Elementary Schools that include any combination of grades K-6 shall be eligible for the program.
- B. An applicant school shall provide a completed application for its pilot program that shall:
 - (1) indicate how the program will develop communication skills, teamwork skills; interpersonal skills; initiative and self-motivation; goal setting skills; problem solving skills; and creativity;
 - (2) estimate the number of students that will be served by the program;
 - (3) agree that the school will provide all data and information required by the USOE for evaluation and reporting purposes, as requested by the USOE;
 - (4) provide additional information requested by the USOE on the application including selection criteria and assurances provided in Section 53A-17a-169(5).

R277-619-4. Required Matching Funds.

- A. The application shall explain how the school will provide matching funds to the amount requested by the applicant as required under Section 53A-17a-169(5)(a).
- B. The applicant school shall assure the USOE that it shall meet the requirement for matching funds for the two-year duration of the pilot program.
- C. The USOE application shall explain or require the nature of the match such as in kind, dollar for dollar, or other creative match options.

R277-619-5. School Selection and Criteria.

- A. The USOE shall provide an application for the Student Leadership Skills Development pilot program by May 15, 2013.
- B. Completed applications shall be returned to the USOE before June 17, 2013.
- C. The USOE shall screen all applications for compliance with all state laws, R277-619 and application requirements.
- D. The USOE may seek the participation and advice of an independent evaluating committee in recommending applications for funding. The Board shall make final school selections consistent with the criteria of Section 53A-17a-169 and R277-619.
- E. The USOE expects to recommend approximately 25

schools for Board selection for funding, allowing \$10,000 per school plus matching funds. Final number of schools and amounts per school, not to exceed \$10,000 per school, shall be determined by number and quality of applications.

E. Funded applications shall be selected and notified by July 1, 2013.

F. The Board shall evaluate the program and report on findings consistent with 53A-17a-169(7)(a).

**KEY: students, leadership skills
August 7, 2013**

**Art X, Sec 3
53A-17a-169(4)
53A-1-401(3)**

R277. Education, Administration.**R277-713. Concurrent Enrollment of High School Students in College Courses.****R277-713-1. Definitions.**

A. "Adjunct/Concurrent faculty" means instructors approved by the cooperating USHE institution and approved by LEAs (as defined in R277-713-1F) receiving concurrent enrollment services from the instructor to teach concurrent enrollment classes on behalf of the USHE institution.

B. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by an LEA and a USHE institution, to provide college level courses to high school students.

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

D. "Concurrent enrollment" for state funding and for the purposes of this rule means enrollment by public school students in one or more USHE institution course(s) under a contractual agreement between the USHE institution and an LEA. Students continue to be enrolled in public schools, counted in average daily membership, and receive credit toward graduation. They also receive college credit for courses.

E. "Fees" for purposes of concurrent enrollment and this rule mean expenses to students directly related to enrollment and tuition. Fees do not include reasonable lab costs, expenses for textbooks and consumable curriculum materials that are required only for USHE credit or grades.

F. "LEA" means a local education agency which includes school boards/public school districts and charter schools.

G. "Technology-intensive concurrent enrollment courses (TICE)," means designed hybrid courses, having a blend of different learning activities available both in classrooms and online, or courses delivered exclusively online.

H. "USHE" means the Utah System of Higher Education.

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

R277-713-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120.5 which directs the Board to adopt rules providing that a school participating in the concurrent enrollment programs offered under Section 53A-15-101 shall receive an allocation from the monies as provided in Section 53A-15-101, Section 53A-1-402(1)(c) which directs the Board to adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses that can be applied to post-secondary education.

C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and criteria for funding appropriate concurrent enrollment expenditures.

R277-713-3. Student Eligibility.

A. LEAs and USHE institutions shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience for students.

B. LEAs have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.

C. To ensure that a student is prepared for college level work, an appropriate assessment shall be administered to the student prior to participation in all concurrent mathematics and English courses, and to determine that the student meets prerequisites previously established for the same campus-based course by the sponsoring USHE institutions.

D. Each student participating in the concurrent enrollment

program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b).

E. LEAs and USHE institutions shall jointly coordinate advice and information provided to a prospective or current high school student who participates in the concurrent enrollment program consistent with Section 53A-15-101. Advising shall include providing information on general education requirements at USHE institutions and assisting students or parents to efficiently choose concurrent enrollment courses to avoid duplication and excess credit hours.

R277-713-4. Courses and Student Participation.

A. Concurrent enrollment allows students the option to complete high school graduation requirements and prepares students to meet college admission requirements at the conclusion of the eleventh grade, but does not preclude a student involved in accelerated learning programs from graduating by the eleventh grade.

B. USHE institutions have the responsibility to determine the USHE institution credit for concurrent enrollment courses, consistent with USHE policies.

C. College-level courses taught in the high school have the same credit hour value as when taught on a college campus; they apply toward graduation on the same basis as courses taught at a USHE institution to which the credits are submitted.

D. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career technical programs to allow a focus of energy and resources on quality instruction in these courses. There may be a variety of courses in the career technical education area. Concurrent Enrollment courses should assist students toward post-secondary degrees.

E(1) TICE concurrent enrollment courses are designed as hybrid courses, having a blend of different learning activities available both in classrooms and online, they may be delivered exclusively online.

(2) TICE courses shall facilitate articulation, transfer of credit, and, when possible, use open source materials available to all USHE institutions in order to reduce costs.

F. All concurrent enrollment courses shall be approved or orchestrated by the high school or the USOE and shall provide for waiver of fees to eligible students.

G. The USOE Teaching and Learning Section shall reimburse LEAs only for courses on the USOE master list.

H. The Board of Regents, after consultation with LEAs, shall provide the USOE with proposed new course offerings, including syllabi and curriculum materials by November 30 of the year preceding the school year in which courses shall be offered.

I. Concurrent enrollment funding shall be provided only for 1000 or 2000 level courses unless a student's SEOP identifies a student's readiness and preparation for a higher level course. This exception shall be individually approved by the student's counselor and the LEA's concurrent enrollment administrator. Concurrent enrollment funding shall not fund unilateral parent/student initiated college attendance or course-taking.

J. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and professional development activities for participating teachers.

K. Appropriate USHE institutions shall take responsibility for course content, procedures, examinations, teaching materials, and program monitoring and all procedures and materials shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on the college or

university campus.

L. Participation in concurrent enrollment generates higher education credit that becomes a part of a student's permanent college transcript.

M. LEAs and USHE institutions shall jointly align information technology systems with all individual student academic achievement so that student information will be tracked through both education systems consistent with Section 53A-1-603.5.

R277-713-5. Program Delivery.

A. USHE institutions that grant higher education/college credit may participate in the concurrent enrollment program, provided that such participation shall be consistent with the law and consistent with Board rules specific to the use of public education funds and rules for public education programs.

B. Concurrent enrollment courses, with exception of courses delivered through technology, may be offered to high school students only by USHE institutions in the corresponding geographic service region, as determined by the State Board of Regents.

C.(1) An LEA may contact the USHE institution in the corresponding geographical service region to provide concurrent enrollment courses, and the higher education institution shall respond to the request within 60 days after the day on which the LEA contacts the institution on whether the institution will offer the requested courses.

(2) If the USHE institution in the corresponding service region denies the request for concurrent enrollment courses, another USHE institution may offer the concurrent enrollment course(s).

(3) Courses delivered through technology are not subject to the corresponding geographic service region requirement.

D. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved.

E. Concurrent enrollment curriculum may be provided through live classroom instruction or telecommunications. The concurrent enrollment program shall be designed and implemented to take full advantage of the most current available educational technology.

F. LEAs shall not be reimbursed for concurrent enrollment courses taken by students who have received a diploma, whose class has graduated or who have participated in graduation exercises. Senior students shall complete reimbursable concurrent enrollment courses prior to their graduation or participation in graduation exercises.

G. Concurrent enrollment is intended primarily for students in their last two years of high school.

(1) Concurrent enrollment offerings may not include high school courses that are typically offered in grades 9 or 10.

(2) The Early College High School Program, specifically initiated to encourage students to earn college credit beginning in the ninth grade leading to a college diploma earned concurrently with a high school diploma, may enroll student Program participants in grades 9 and 10 in concurrent enrollment courses.

H. The Board and State Board of Regents shall cooperate closely in developing, implementing and evaluating this program.

I. LEAs shall use USOE designated 11-digit course codes for concurrent enrollment courses.

R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.

A. Secondary students may be assessed a one-time per institution admissions fee required for full-time or part-time students in concurrent enrollment courses. No additional application fee may be charged.

B. A secondary student may be charged partial tuition up to \$30 per credit hour for each concurrent enrollment course for which the student receives college credit.

C(1) A USHE institution may charge a concurrent enrollment student who qualifies for free or reduced school lunch partial tuition of no more than \$5 per credit hour for each concurrent enrollment course for which the student receives college credit.

(2) If a concurrent enrollment course is taught by a public school educator in a public school facility, a USHE institution may charge a concurrent enrollment student no more than \$10 per credit hour for the concurrent enrollment course for which the student receives college credit.

(3) If a concurrent enrollment course is taught through video conferencing, a USHE institution may charge a concurrent enrollment student no more than \$15 per credit hour for the concurrent enrollment course for which the student receives USHE credit.

D. Concurrent enrollment program costs attributable only to USHE credit or enrollment are not fees and as such are not subject to fee waiver under R277-407.

E. All non-USHE related student costs or fees related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.

F. LEAs shall be responsible for these waivers. The agreement between the USHE institution and the district may address the responsibility for fee waivers.

G. Credit:

(1) A student shall receive high school credit for a concurrent enrollment course that is consistent with the LEA policies for awarding credit for graduation.

(2) Concurrent enrollment course credit shall count toward high school graduation credit requirements and for college credit; college credit shall be determined by the USHE institution consistent with this rule.

(3) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the USHE institution to which the credits are submitted.

(4) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.

R277-713-7. Faculty Requirements.

A. Public school educators in concurrent enrollment programs shall be approved prior to teaching as adjunct faculty and supervised by a USHE institution. Public school educators shall have secondary endorsements in the subject area(s) in which they teach and meet highly qualified standards for their assignment(s) consistent with R277-510.

B. USHE institution faculty beginning their USHE employment after the 2004-05 school year who are not K-12 teachers and who have significant unsupervised access to K-12 students and instruct in the concurrent enrollment program defined under this rule shall complete a criminal background check consistent with Section 53A-3-410. The adjunct faculty employer shall have responsibility for determining the need for criminal background checks consistent with the law and for satisfying this requirement and shall maintain appropriate documentation.

C. Adjunct faculty status of high school teachers:

(1) High school teachers who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department.

(2) LEAs and USHE institutions shall share expertise and professional development, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students and content, including both federal and state laws specific to student privacy and student records.

R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

A. LEAs shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the LEA in the prior year compared to the state total of completed concurrent enrollment hours. Successfully completed means that a student received USHE credit for the course. Concurrent enrollment funds may not reimburse LEAs for concurrent enrollment courses repeated by students. Appropriate reimbursement may be verified at any reasonable time by USOE audit.

B. The funds shall first be allocated proportionally, based upon student credit hours delivered.

(1) Courses that are taught by public school educators: 60 percent of the funds shall be allocated to LEAs, and 40 percent of the funds shall be allocated to the State Board of Regents.

(2) Courses taught by college or university faculty: 60 percent of the funds shall be allocated to the State Board of Regents, and 40 percent of the funds shall be allocated to LEAs.

C. Each LEA shall receive its proportional share of concurrent enrollment monies allocated to the LEA pursuant to Section 53A-17a-120.5 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.

D. The state shall not reimburse LEAs for concurrent enrollment in excess of 30 semester hours per student per year.

E. Funds allocated to LEAs for concurrent enrollment shall not be used for any other program.

F. LEA use of state funds for concurrent enrollment is limited to the following:

(1) aid in professional development of adjunct faculty in cooperation with the participating USHE institution;

(2) assistance with delivery costs for distance learning programs;

(3) participation in the costs of LEA personnel who work with the program;

(4) student textbooks and other instructional materials; and

(5) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.

(6) purchases by LEAs of classroom equipment required to conduct concurrent enrollment courses.

(7) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

G. LEAs shall provide the USOE with end-of-year expenditures reports itemized by the categories.

R277-713-9. Annual Contracts and Other Student Instruction Issues.

A. Collaborating LEAs and USHE institutions shall negotiate annual contracts including:

(1) the courses offered;

(2) the location of the instruction;

(3) the teacher;

(4) student eligibility requirements;

(5) course outlines;

(6) texts, and other materials needed; and

(7) the administrative and supervisory services, professional development, and reporting mechanisms to be provided by each party to the contract.

(a) each LEA shall provide an annual report to the USOE

regarding supervisory services and professional development provided by a USHE institution.

(b) each LEA shall provide an annual report to the USOE indicating that all concurrent enrollment instructors are in compliance with R277-713-7.

B. An LEA shall provide a copy of the annual contract entered into between an LEA and a USHE institution for the upcoming school year no later than May 30 annually.

C. The annual concurrent enrollment agreement between a USHE institution and an LEA who has responsibility shall:

(1) provide for parental permission for students to participate in concurrent enrollment classes, which includes notice to parents that participation in concurrent enrollment courses counts toward a student's college record/transcript,

(2) provide for the entity responsible for parent notification about concurrent enrollment purpose(s) and student and family privacy protections; and

(3) provide for discussion and training, as necessary, to all concurrent enrollment instructors about student information, student records laws, and student confidentiality.

**KEY: students, curricula, higher education
August 26, 2013**

Notice of Continuation August 14, 2012

**Art X Sec 3
53A-17a-120.5
53A-1-402(1)(c)
53A-1-401(3)**

R307. Environmental Quality, Air Quality.**R307-101. General Requirements.****R307-101-1. Foreword.**

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and

regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(8)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing

facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Condensable PM2.5" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation

was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board, the director or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filterable PM2.5" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel

for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

- (i) Salt Lake County, effective August 18, 1997; and
- (ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

- (i) Salt Lake City, effective March 22, 1999;
- (ii) Ogden City, effective May 8, 2001; and
- (iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

- (1) routine maintenance, repair and replacement;
- (2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) use of an alternative fuel by reason of an order or rule

under section 125 of the federal Clean Air Act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

(a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

(b) which the source is otherwise approved to use;

(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum or reduction plants;
- (g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance

for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM2.5 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM2.5, and has been identified in the applicable implementation plan for PM2.5 as significant for the purpose of developing control measures. Specifically, PM2.5 precursors include SO₂, NO_x, and VOC.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or

coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Primary PM2.5" means the sum of filterable PM2.5 and condensable PM2.5.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date

established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this

definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

PM2.5: 10 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as solvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project

that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2012.

KEY: air pollution, definitions

August 8, 2013

Notice of Continuation July 2, 2009

19-2-104(1)(a)

R307. Environmental Quality, Air Quality.**R307-107. General Requirements: Breakdowns.****R307-107-1. Applicability and Timing.**

(1) The owner or operator of a source shall report breakdowns to the director within 24 hours of the incident via telephone, electronic mail, fax, or other similar method.

(2) A detailed written description of the circumstance of the incident as described in R307-107-2, including a corrective program directed at preventing future such incidents, shall be submitted within 14 days of the onset of the incident.

(3) For those breakdowns involving only emissions that are monitored in accordance with R307-170, the reporting requirements of R307-170 shall satisfy the reporting deadlines of R307-107-1(1) and (2). In all other respects, the requirements in R307-107-1(2) and R307-107-2 shall be considered to apply in addition to the requirements of R307-170.

R307-107-2. Reporting.

(1) The breakdown incident report shall include the cause and nature of the event, estimated quantity of emissions (total and excess), time of emissions and any relevant evidence, including, but not limited to, evidence that:

(a) There was an equipment malfunction beyond the reasonable control of the owner or operator;

(b) The excess emissions could not have been avoided by better operation, maintenance or improved design of the malfunctioning component;

(c) To the maximum extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions;

(d) Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and as possible;

(e) All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality; and

(f) The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance, or inadequate design of the malfunctioning component.

(2) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate the elements listed in R307-107-2(1).

R307-107-3. Enforcement Discretion.

The director will evaluate, on a case-by-case basis, the information submitted in R307-107-1 and 2 to determine whether to pursue enforcement action.

KEY: air pollution, unavoidable breakdown, excess emissions

July 31, 2012

19-2-104

Notice of Continuation August 8, 2013

R307. Environmental Quality, Air Quality.**R307-123. General Requirements: Clean Fuels and Vehicle Technology Grant and Loan Program.****R307-123-1. Authorization and Purpose.**

This rule is authorized by Section 19-1-405, which establishes criteria and definitions used to determine eligibility for use of the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403. R307-123 establishes procedures to provide proof of purchase to the Board for an OEM vehicle, or the conversion or retrofit of a vehicle for which a grant or loan made with the monies available in the Fund is allowed under Subsection 19-1-403(2)(a). Eligible technologies are required to meet the criteria and follow the procedures established in R305-4.

R307-123-2. Definitions.

Definitions. The following additional definitions apply to R307-123.

"Certified by the director" means that:

(1) A motor vehicle on which conversion equipment has been installed meets the criteria in Subsection 19-1-405(1)(a) and demonstrates a reduction in emissions as defined in Subsection 19-1-405(2); or

(2) A motor vehicle on which a retrofit has been installed meets the following criteria:

(a) the motor vehicle's emissions of regulated pollutants, when operating with the retrofit equipment, is less than the emissions were before the installation of the retrofit equipment; and

(b) a reduction in emissions under Subsection R307-123-2(2)(a) is demonstrated by:

(i) certification of the retrofit by the federal EPA or by a state whose certification standards are recognized by the Board; or

(ii) any other test or standard recognized by the Board.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that vehicle or equipment eligible.

"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

"Original equipment manufacturer (OEM) vehicle" means OEM vehicle as defined in Subsection 19-1-402(8).

"Retrofit" means retrofit as defined in Subsection 19-1-402(11).

"Retrofit equipment" means a diesel oxidation catalyst, a diesel particulate filter, or a closed crankcase filtration system, that has been approved for use in engine retrofit programs by the federal EPA or by a state whose testing protocols are recognized by the Board.

R307-123-3. Demonstration of Eligibility for OEM Vehicles.

To demonstrate that a vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1)(a) A copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle; or

(b) a signed statement by an Automotive Service Excellence (ASE) certified technician that includes the vehicle identification number (VIN) and states that the vehicle is an OEM vehicle;

(2) An original or copy of the purchase order, customer invoice, or receipt including the VIN; and

(3) A copy of the current Utah vehicle registration.

R307-123-4. Demonstration of Eligibility for Vehicles Converted to Clean Fuels.

To demonstrate that a conversion of a motor vehicle fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) If the vehicle is registered within a county with an inspection and maintenance (I/M) program, a copy of the vehicle inspection report from an approved station showing that the converted clean fuel vehicle meets all county emissions requirements for all installed fuel systems; or

(b) in all other areas of the State a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional;

(5) each of the following:

(a) the conversion equipment manufacturer,

(b) the conversion equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the vehicle;

(6) proof that the conversion is certified by the director;

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration, which shows that the vehicle is registered in the applicant's name.

R307-123-5. Demonstration of Eligibility for Retrofitted Vehicles.

To demonstrate that a retrofit of a motor vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) each of the following:

(a) the retrofit equipment manufacturer,

(b) the retrofit equipment model number,

(c) the date of the retrofit, and

(d) the name, address, and phone number of the person that retrofitted the vehicle;

(5) proof that the retrofit is certified by the director;

(6) an original or copy of the purchase order, customer invoice, or receipt; and

(7) a copy of the current Utah vehicle registration.

KEY: air pollution, alternative fuels, grants and loans, motor vehicles

November 8, 2012

19-2-104

Notice of Continuation August 8, 2013

19-1-401

59-7-605

59-10-1009

R309. Environmental Quality, Drinking Water.
R309-500. Facility Design and Operation: Plan Review, Operation and Maintenance Requirements.
R309-500-1. Purpose.

The purpose of this rule is to describe plan review procedures and requirements, clarify projects requiring review, and inspection requirements for drinking water projects. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-500-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-500-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-500-4. General.

(1) Construction and Operation of New Facilities.

As authorized in 19-4-106(3) of the Utah Code, the Director may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to insure proper design and construction.

Plans and specifications and a business plan as required by R309-800-5, along with a completed project notification form, shall be submitted to the Director for any new water systems or previously un-reviewed water systems unless acceptable data can be presented that the proposed or existing water system will not become a "public water system" as defined in 19-4-102 of the Utah Code or in R309-110.

Construction of new facilities for public water systems or existing facilities of previously un-reviewed public drinking water systems shall conform to rules R309-500 through R309-550; the "Facility Design and Operation" rules. There may be times in which the requirements of the Facility Design and Operation rules are not appropriate. Thus, the Director may grant an "exception" to the Facility Design and Operation rules if it can be shown that the granting of such an exception will not jeopardize the public health.

Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Director unless waivers have been issued as allowed by R309-500-6(3). This approval shall be referred to as the Plan Approval.

Furthermore, no new public drinking water facility shall be put into operation until written approval to do so has been given by the Director or this requirement waived. This approval is referred to as the Operating Permit.

(2) Existing Facilities.

All existing public drinking water systems shall be capable of reliably delivering water which meets the minimum current standard of drinking water quantity and quality requirements. The Director may require modification of existing systems in accordance with R309-500 through R309-550 when such modifications are needed to reliably achieve minimum quantity and quality requirements.

(3) Operation and Maintenance of Existing Facilities.

Public drinking water system facilities shall be operated and maintained in a manner which protects the public health.

As a minimum, the operation and maintenance procedures of R309-500 through R309-550 shall be adhered to.

R309-500-5. Public Drinking Water Project.

(1) Definition.

A public drinking water project, requiring the submittal of a project notification form along with plans and specifications, is any of the following:

(a) The construction of any facility for a proposed drinking water system (see 19-4-106(3) of the Utah Code or R309-500-4(1) above describing the authority of the Director).

(b) Any addition to, or modification of, the facilities of an existing public drinking water system which may affect the quality or quantity of water delivered.

(c) Any activity, other than on-going operation and maintenance procedures, which may affect the quality or quantity of water delivered by an existing public drinking water system. Such activities include:

(i) the interior re-coating or re-lining of any raw or drinking water storage tank, or water storage chamber within any treatment facility,

(ii) the "in-situ" re-lining of any pipeline,

(iii) a change or addition of any primary coagulant water treatment chemical (excluding filter, flocculent or coagulant aids) when the proposed chemical does not appear on a list of chemicals pre-approved by the Director for a specific treatment facility, and

(iv) the re-development of any spring or well source or replacement of a well pump with one of different capacity.

(2) On-going Operation and Maintenance Procedures.

On-going operation and maintenance procedures are not considered public drinking water projects and, accordingly, are not subject to the project notification, plan approval and operating permit requirements of this rule. However, these activities shall be carried out in accordance with all operation and maintenance requirements contained in R309-500 through R309-550 and specifically the disinfection, flushing and bacteriological sampling and testing requirements of ANSI/AWWA C651-05 for pipelines, ANSI/AWWA C652-02 for storage facilities, and ANSI/AWWA C654-03 for wells before they are placed back into service. The following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair,

(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size as the old pipeline or the new segment is upgraded to meet the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3),

(c) tapping existing water mains with corporation stops so as to make connection to new service laterals to individual structures,

(d) distribution pipeline additions where the pipeline size is the same as the main supplying the addition or the pipeline addition meets the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3), the length is less than 500 feet and contiguous segments of new pipe total less than 1000 feet in any fiscal year,

(e) entry into a drinking water storage facility for the purposes of inspection, cleaning and maintenance, and

(f) replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

R309-500-6. Plan Approval Procedure.

(1) Project Notification.

The Division shall be notified prior to the construction of

any "public drinking water project" as defined in R309-500-5(1) above. The notification may be prior to or simultaneous with submission of construction plans and specifications as required by R309-500-6(2) below. Notification shall be made by the management of the regulated public water system on a form provided by the Division. Information required by this form shall be determined by the Division and may include:

- (a) whether the project is for a new or existing public drinking water system,
- (b) the professional engineer, registered in the State of Utah, designing the project and his/her experience designing public drinking water projects within the state,
- (c) the individual(s) who will be inspecting the project during construction and whether such inspection will be full-time or part time,
- (d) whether required approvals or permits from other governmental agencies (e.g. local planning commissions, building inspectors, Utah Division of Water Rights) are awaiting approval by the Director, the agency's name and contact person,
- (e) the fire marshal, fire district or other entity having legal authority to specify requirements for fire suppression in the project area,
- (f) for community and non-transient non-community public water systems or any public water system treating surface water, the name of the certified operator who is, or will be, in direct responsible charge of the water system,
- (g) whether the water system has a registered professional engineer employed, appointed or designated as being directly responsible for the entire system design and his or her name and whether the system is requesting waiving of plan submittal under conditions of R309-500-6 (3),
- (h) the anticipated construction schedule, and
- (i) a description of the type of legal entity responsible for the water system (i.e. corporation, political subdivision, mutual ownership, individual ownership, etc.) and the status of the entity with respect to the rules of the Utah Public Service Commission.

(2) Pre-Construction Requirements.

All of the following shall be accomplished before construction of any public drinking water project commences:

- (a) Contract documents, plans and specifications for a public drinking water project shall be submitted to the Division at least 30 days prior to the date on which action is desired unless the system is eligible for and has requested waiving of plan submittal. Any submittal shall include engineering reports, pipe network hydraulic analyses, water consumption data, supporting information, evidence of rights-of-way and reference to any previously submitted master plans pertinent to the project, along with a description of a program for keeping existing water works facilities in operation during construction so as to minimize interruption of service.

(b) Plans and specifications shall be prepared for every anticipated public water system project. The design utilized shall conform to the requirements of R309-500 through R309-550. Furthermore, the plans and specification shall be sufficiently detailed to assure that the project shall be properly constructed. Drawings shall be compatible with Division's document storage and microfilming practice. Drawings which are illegible or of unusual size shall not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(c) The plans and specifications shall be stamped and signed by a licensed professional engineer in accordance with Section 58-22-602(2) of the Utah Code.

(d) Plans and specifications shall be reviewed for conformance with R309-500 through R309-550. No work shall commence on a public water system project until a plan approval has been issued by the Director unless conditions

outlined in R309-500-6(3) are met and waiving of plan submittal has been requested. If construction or the ordering of substantial equipment has not commenced within one year, a renewal of the Plan Approval shall be obtained prior to proceeding with construction.

(e) If, in the judgment of the Director, alternate designs or specific solutions can protect the public health to the same or greater extent as achieved in R309-500 through R309-550, the Director may grant an exception thereto (see the third paragraph of R309-500-4(1)).

(f) Novel equipment or treatment techniques may be developed which are not specifically addressed by these rules. These may be accepted by the Director if it can be shown that:

- (i) the technique will produce water meeting the requirements of R309-200 of these rules,
- (ii) the Director has determined that it will protect public health to the same extent provided by comparable treatment processes outlined in these rules, and
- (iii) the Director has determined the technique is as reliable as any comparable treatment process outlined in these rules.

(3) Waiving of Plan Submittal Requirement.

With identification of a professional engineer, as indicated below, on a project notification form the plan submittal requirement may be waived for certain projects. In these instances, in lieu of plans and specifications, a "certification of rule conformance" shall be submitted along with the additional information required for an operating permit (see R309-500-9), signed by the professional engineer identified to Director in (b) or, if the system has not employed, appointed, or designated such, the registered professional engineer who prepared the items in (a). Projects eligible for this waiving of plan submittal are:

- (a) distribution system improvements (excluding pressure reducing valve stations and in-line booster pump stations) which conform to a "master plan" previously reviewed and approved by the Director and installed in accordance with the system's standard installation drawings, also previously reviewed and approved by the Director, or
- (b) distribution system improvements consisting solely of pipelines and pipeline appurtenances (excluding pressure reducing valve stations and in-line booster pump stations);
 - (i) less than or equal to 4 inches in diameter in water systems (without fire hydrants) serving solely a residential population less than 3,300;
 - (ii) less than or equal to 8 inches in diameter in water systems (with fire hydrants) providing water for mixed use (commercial, industrial, agricultural and/or residential) to a population less than 3,300;
 - (iii) less than or equal to 12 inches in diameter in water systems (with fire hydrants) providing water for mixed use to a population between 3,300 and 50,000;
 - (iv) less than or equal to 16 inches in diameter in water systems (with fire hydrants) providing water for mixed use to a population greater than 50,000.

Additionally, the above systems in (b) shall employ, appoint or designate a registered professional engineer who is directly responsible for the entire public water system design and identify this individual to the Director as well as have standard installation drawings previously reviewed and approved by the Director before being eligible for waiving of plan submittal requirements.

R309-500-7. Inspection During Construction.

Staff from the Division, or the appropriate local health department, after reasonable notice and presentation of credentials may make visits to the work site to assure compliance with these rules.

R309-500-8. Change Orders.

Any deviations from approved plans or specifications affecting capacity, hydraulic conditions, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the Director. If deemed appropriate, the Director may require that revised plans and specifications be submitted for review. Revised plans or specifications shall be submitted to the Division in time to permit the review and Director's approval of such plans or specifications before any construction work, which will be affected by such changes, is begun.

R309-500-9. Issuance of Operating Permit.

The Division shall be informed when a public drinking water project, or a well-defined phase thereof, is at or near completion. The new or modified facility shall not be used until an "Operating Permit" is issued, in writing, by the Director. This permit shall not be issued until all of the following items are submitted and found to be acceptable for all projects with the exception of distribution lines (including in-line booster pump stations or pressure reducing stations), which may be placed into service prior to submittal of all items if the professional engineer responsible for the entire system, as identified to the Director, has received items (1) and (4):

(1) a statement from a registered professional engineer that all conditions of Plan Approval were accomplished ("certification of rule conformance"),

(2) as-built "record" drawings; unless no changes are made from previously submitted and approved plans during construction,

(3) confirmation that a copy of the as-built "record" drawings has been received by the water system owner,

(4) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA Standard,

(5) where appropriate, water quality data

(6) a statement from the Engineer indicating what changes to the project were necessary during construction, and certification that all of these changes were in conformance with these rules ("certification of rule conformance"),

(7) all other documentation which may have been required during the plan review process, and

(8) confirmation that the water system owner has been provided with an Operation and Maintenance manual for the new facility.

R309-500-10. Adequacy of Wastewater Disposal.

Plans and specifications for new water systems, or facilities required as a result of proposed subdivision additions to existing water systems, shall only be approved if the method(s) of wastewater disposal in the affected area have been approved, or been determined to be feasible, by the Director of the Division of Water Quality or the appropriate local health agency.

R309-500-11. Financial Viability.

Owners of new or existing water systems are encouraged to develop realistic financial strategies for recouping the costs of constructing and operating their systems. Plans for water system facilities shall not be approved when it is obvious that public health will eventually be threatened because the anticipated usage of the system will not generate sufficient funds to insure proper operation and maintenance of the system (see also R309-352-5).

R309-500-12. Fee Schedule.

The Division may charge a fee for the review of plan and specifications. A fee schedule is available from the Division.

R309-500-13. Other Permits.

Local, county or other state permits may also be necessary before beginning construction of any drinking water project.

R309-500-14. Reference Documents.

All references made in R309-500 through R309-550 are available for inspection at the Division's office.

R309-500-15. Violations of These Rules.

Violations of rule contained in R309-500 through R309-550 are subject to the provisions of the Utah Safe Drinking Water Act (Title 19, Chapter 4 Section 109 of the Utah Code) and may be subject to fines and penalties.

KEY: drinking water, plan review, operation and maintenance requirements, permits

August 28, 2013

19-4-104

Notice of Continuation March 22, 2010

R309. Environmental Quality, Drinking Water.
R309-510. Facility Design and Operation: Minimum Sizing Requirements.

R309-510-1. Purpose.

This rule specifies requirements for the sizing of public drinking water facilities such as sources (along with their associated treatment facilities), storage tanks, and pipelines. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-510-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-510-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-510-4. General.

This rule provides estimates of quantities and flow rates which shall be used in the design of new systems, or if there is an absence of data collected by the public water system meeting the required confidence level for a reduction mentioned below, when evaluating water sources, storage facilities and pipelines. Within each of these three broad categories, the designer shall ascertain the contributions on demand from the indoor use of water, the outdoor use of water, and fire suppression activities (if required by local authorities). These components must be added together to determine the total demand on a given facility.

R309-510-5. Reduction of Requirements.

If acceptable data are presented, certain number of days of peak day demand to establish minimum source capacity; certain number of years of annual demand to establish minimum water right requirements; and certain number of readings of peak hourly demand to establish minimum peak instantaneous demand; showing that the requirements made herein are excessive for a given project, the requirements may be appropriately reduced to the 90th percentile of readings, on a case by case basis by the Director. In the case of Recreational Home Developments, in order to qualify for a quantity reduction, not only must the actual water consumption be less than quantities required by rule but enforceable policy restrictions must have been approved which prevent the use of such dwellings as a permanent domicile and these restrictions shall have been consistently enforced. The Director may reconsider any reduced minimums if the nature and use of the system changes.

R309-510-6. Water Conservation.

This rule is based upon typical current water consumption patterns in the State of Utah. They may be excessive in certain settings where legally enforceable water conservation measures exist. In these cases the requirements made in this section may be reduced on a case-by-case basis by the Director.

R309-510-7. Source Sizing.

(1) Peak Day Demand and Average Yearly Demand.

Sources shall legally and physically meet water demands under two separate conditions. First, they shall meet the

anticipated water demand on the day of highest water consumption. This is referred to as the peak day demand. Second, they shall also be able to provide one year's supply of water, the average yearly demand.

(2) Estimated Indoor Use.

In the absence of firm water use data, Tables 510-1 and 510-2 shall be used to estimate the peak day demand and average yearly demand for indoor water use.

TABLE 510-1
Source Demand for Indoor Use

Type of Connection	Peak Day Demand	Average Yearly Demand
Year-round use		
Residential	800 gpd/conn	146,000 gal./conn
ERC	800 gpd/ERC	146,000 gal./ERC
Seasonal/Non-residential use		
Modern Recreation Camp	60 gpd/person	(see note 1)
Semi-Developed Camp		
a. with pit privies	5 gpd/person	(see note 1)
b. with flush toilets	20 gpd/person	(see note 1)
Hotel, Motel, and Resort	150 gpd/unit	(see note 1)
Labor Camp	50 gpd/person	(see note 1)
Recreational Vehicle Park	100 gpd/pad	(see note 1)
Roadway Rest Stop	7 gpd/vehicle	(see note 1)
Recreational Home Development	400 gpd/conn	(see note 1)

Note 1. Annual demand shall be based on the number of days the system will be open during the year times the peak day demand unless data acceptable to the Director, with a confidence level of 90% or greater showing a lesser annual consumption, can be presented.

TABLE 510-2
Source Demand for Individual Establishments^(a)
(Indoor Use)

Type of Establishment	Peak Day Demand (gpd)
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	
a. for each resident boarder and employee	50
b. for each nonresident boarders	10
Bowling Alleys, per alley	
a. with snack bar	100
b. with no snack bar	85
Churches, per person	
c. per employee	15
Country Clubs	
a. per resident member	100
b. per nonresident member present	25
c. per employee	15
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds, per person	
a. with full-time employees and food prep.	70
b. with no full-time employees and no food prep.	5
Gyms	
a. per participant	25
b. per spectator	4
Hairdresser	
a. per chair	50
b. per operator	35
Hospitals, per bed space	
Industrial Buildings, per 8 hour shift,	250
per employee (exclusive of industrial waste)	
a. with showers	35
b. with no showers	15
Launderette, per washer	
Movie Theaters	580
a. auditorium, per seat	5
b. drive-in, per car space	10
Nursing Homes, per bed space	
Office Buildings and Business Establishments,	280
per shift, per employee (sanitary wastes only)	
a. with cafeteria	25
b. with no cafeteria	15
Picnic Parks, per person (toilet wastes only)	
Restaurants	5

Fire suppression storage shall be required if the water system is intended to provide fire fighting water as evidenced by fire hydrants connected to the piping. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire suppression storage shall be assumed to be 120,000 gallons (1000 gpm for 2 hours).

(4) Emergency Storage.

Emergency storage shall be considered during the design process. The amount of emergency storage shall be based upon an assessment of risk and the desired degree of system dependability. The Director may require emergency storage when it is warranted to protect public health and welfare.

R309-510-9. Distribution System Sizing.

(1) General Requirements.

The distribution system shall be designed to insure that minimum water pressures as required in R309-105-9 exist at all points within the system. If the distribution system is equipped with fire hydrants, the Division will require a letter from the local fire authority stating the fire flow and duration required of the area to insure the system shall be designed to provide minimum pressures as required in R309-105-9 to exist at all points within the system when needed fire flows are imposed upon the peak day demand flows of the system.

(2) Indoor Use, Estimated Peak Instantaneous Demand.

(a) For community water systems and large non-community systems, the peak instantaneous demand for each pipeline shall be assumed for indoor use as:

$$Q = 10.8 \times N^{0.64}$$

where N equals the total number of ERC's, and Q equals the total flow (gpm) delivered to the total connections served by that pipeline.

For Recreational Vehicle Parks, the peak instantaneous flow for indoor use shall be based on the following:

TABLE 510-6

Peak Instantaneous Demand for Recreational Vehicle Parks

Number of Connections	Formula
0 to 59	$Q = 4N$
60 to 239	$Q = 80 + 20N^{0.5}$
240 or greater	$Q = 1.6N$

NOTES FOR TABLE 510-6:

Q is total peak instantaneous demand (gpm) and N is the maximum number of connections. However, if the only water use is via service buildings the peak instantaneous demand shall be calculated for the number of fixture units as presented in Appendix E of the 2006 International Plumbing Code.

(b) For small non-community water systems the peak instantaneous demand to be estimated for indoor use shall be calculated on a per-building basis for the number of fixture units as presented in Appendix E of the 2006 International Plumbing Code.

(3) Outdoor Use, Estimated Peak Instantaneous Demand.

Peak instantaneous demand to be estimated for outdoor use is given in Table 510-7. The procedure for determining the map zone and irrigated acreage for using Table 510-7 is outlined in Section R309-510-7(3).

TABLE 510-7

Peak Instantaneous Demand for Outdoor Use

Map Zone	Peak Instantaneous Demand (gpm/irrigated acre)
1	4.52
2	5.60
3	6.78
4	7.92

5
6

9.04
9.80

(4) Fire Flows.

(a) Distribution systems shall be designed to deliver needed fire flows if fire hydrants are provided. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire flows shall be assumed to be 1000 gpm unless the local planning commission provides a letter indicating that the system will not be required to provide any fire flows, in which case fire hydrants will not be allowed to be installed on any mains.

(b) If a distribution system is equipped with fire hydrants, the system shall be designed to insure that minimum pressures required by R309-105-9 exist at all points within the system when fire flows are added to the peak day demand of the system. Refer to Section R309-510-7 for information on determining the peak day demand of the system.

**KEY: drinking water, minimum sizing, water conservation
August 28, 2013
Notice of Continuation March 22, 2010**

19-4-104

R309. Environmental Quality, Drinking Water.**R309-511. Hydraulic Modeling Requirements.****R309-511-1. Purpose.**

The purpose of this rule is to ensure that the increased water demand created by new construction will not adversely affect existing or new water users. This purpose will be accomplished by requiring the public water system or its agent to evaluate the water delivery system using a hydraulic model and certify to the Director that the project will not adversely impact the system. It is intended that the public water system or its agent will use the findings of the hydraulic model to design improvements providing satisfactory service to both existing and new water users. This rule requires the public water system or its agent to certify that the design meets minimum flow requirements of R309-510 and pressure requirements as set forth in rule R309-105-9.

R309-511-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-511-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

"The public water system or its agent" is the individual responsible for signing the certification and preparing the Hydraulic Modeling Design Elements Report. This individual shall be a registered professional engineer, licensed to practice in the State of Utah.

R309-511-4. General.**(1) Rule Applicability.**

(a) This rule applies to public drinking water systems categorized as community water systems as defined by rule R309-100-4(2) and to non-transient non-community water systems that have system demands higher than required by R309-510 or with demands for fire suppression. All public drinking water systems are still required to comply with R309-550-5 with respect to water main design which may require a hydraulic analysis. Further, Certifications as defined by this rule, shall be part of the submission of plans for any public drinking water project as defined in rule R309-500-5(1), except projects that meet one of the following criteria:

(i) Public drinking water projects that will not result in negative hydraulic impact, such as, but not limited to,

(A) addition of new sources in accordance with R309-515.

(B) adding disinfection, fluoridation, or other treatment facilities that do not adversely impact flow, pressure or water quality.

(C) storage tank repair or recoating.

(D) water main additions with no expansion of service (i.e. looping lines).

(E) adding transmission lines to storage or sources without adding service connections.

(F) adding pump station(s) from source or storage upstream of distribution service connections.

(G) public drinking water projects that have negligible hydraulic impact as determined by the Director.

(ii) Public drinking water projects that are a part of a planned phase of a master plan previously approved by the Director per R309-500-6(3)a).

(iii) The water system maintains and updates a hydraulic model of the system, and has designated a professional engineer responsible for overseeing the hydraulic analysis in meeting the requirements of R309-511 in writing to the Director.

(iv) The water system has a means that is deemed

acceptable by the Director to gather real time data indicative of hydraulic conditions in model scenarios of R309-511-5(9), and the real time data shows the system is capable of meeting the flow and pressure requirements for the additional demands placed on the existing system.

(b) A public water system must clearly identify the reason in the plan submittal if it wishes to demonstrate that R309-511 does not apply to a new construction project. In some cases, supporting documentation may be needed.

(c) If there are existing deficiencies in the water system, the Director may allow a new construction project to proceed in accordance with the plan review requirements in R309-500 through 550 as long as the public water system demonstrates that the new construction project is located in a hydraulically separated area and does not adversely impact the existing deficiencies, or does not create new deficiencies within the water system.

(2) Rule Elements.

The public water system or its agent, in connection with the submission of plans and specifications to the Director, shall perform the following:

(a) Conduct a hydraulic modeling evaluation consistent with the requirements as set forth in this rule and R309-510. This model shall include either the entire public drinking water system or the specific areas affected by the new construction if hydraulically separated areas exist within the water system.

(b) Calibrate the model using field measurements and observations.

(c) Certify in writing to the Director that the design complies with the sizing requirements of R309-510 and the minimum water pressures of R309-105-9.

(d) Prepare and submit a Hydraulic Model Design Elements Report (see R309-511-7).

(f) Prepare a System Capacity and Expansion Report if required (see R309-511-8).

R309-511-5. Requirements for the Hydraulic Model.

The following minimum requirements must be incorporated into hydraulic models constructed to meet these requirements:

(1) Include at least 80 percent of the total pipe lengths in the distribution system affected by the proposed project.

(2) Account for 100 percent of the flow in the distribution system affected by the proposed project. Water demand allocation must account for at least 80 percent of the flow delivered by the distribution system affected by the proposed project if customer usage in the system is metered.

(3) Include all 8-inch diameter and larger pipes. Pipes smaller than 8-inch diameter shall also be included if they connect pressure zones, storage facilities, major demand areas, pumps, and control valves, or if they are known or expected to be significant conveyers of water such as fire suppression demand. Model piping does not need to include service lateral piping.

(4) Include all pipes serving areas at higher elevations, dead ends, remote areas of a distribution system, and areas with known under-sized pipelines.

(5) Include all storage facilities and accompanying controls or settings applied to govern the open/closed status of the facility that reflect standard operations.

(6) If applicable, include all pump stations, drivers (constant or variable speed), and accompanying controls or settings applied to govern their on/off/speed status that reflect various operating conditions and drivers.

(7) Include all control valves or other system features that could significantly affect the flow of water through the distribution system (i.e. interconnections with other systems, pressure reducing valves between pressure zones) reflecting various operating conditions.

(8) Impose peak day and peak instantaneous demands to the water system's facilities. These demands may be peak day and peak instantaneous demands per R309-510, the reduced demand approved by the Director per R309-510-5, or the demands experienced by the water system which are higher than the values listed in R309-510. This may require multiple model simulations to account for the varying water demand conditions. In some cases, extended period simulations are needed to evaluate changes in operating conditions over time. This will depend on the complexity of the water system, extent of anticipated fire event and nature of the new expansion.

(9) Calibrate the model to adequately represent the actual field conditions using field measurements and observations.

(10) If fire hydrants are connected to the distribution system, account for fire suppression requirements specified by local fire authority or use the default values stated in R309-510-9(4). For significant fire suppression demand, extended simulations must contain the run time for the period of anticipated fire event. In some cases, a steady state model may be sufficient for residential fire suppression demand.

(11) Account for outdoor use, such as irrigation, if the drinking water system supplies water for outdoor use.

R309-511-6. Elements of the Public Water System or Its Agent's Certification.

(1) The public water system or its agent's certification.

The Director relies upon the professional judgment of the registered professional engineer who certifies that the hydraulic analysis and evaluation have been done properly and that the flow and pressure requirements have been met. The public water system or its agent shall, after a thorough review, submit a document to the Director certifying that the following requirements have been met:

(a) The hydraulic model requirements as set forth in rule R309-511-5.

(b) The appropriate demand requirements as specified in this rule and rule R309-510 have been used to evaluate various operating conditions of the public drinking water system.

(c) The hydraulic model predicts that new construction will not result in any service connection within the new expansion area not meeting the minimum distribution system pressures as specified in R309-105-9.

(d) The hydraulic model predicts that new construction will not decrease the pressures within the existing water system to such that the minimum distribution system pressures as specified in R309-105-9 are not met.

(e) The calibration methodology is described and the model is sufficiently accurate to represent conditions likely to be experienced in the water delivery system.

(f) Identify the hydraulic modeling method, and if computer software was used, the software name and version used.

(2) The format of the public water system or its agent's submission.

The public water system or its agent shall submit to the Director the following documentation:

(a) The certification as required in R309-511-6(1). The certification shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

(b) A Hydraulic Model Design Elements Report (see R309-511-7). The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

(c) For community public water systems, the water system management shall certify that they have received a copy of input and output data for the hydraulic model with the simulation showing the worst case results in terms of water system pressure and flow.

(3) The submission of supporting documentation.

The public water system or its agent shall submit a System Capacity and Expansion Report (see R309-511-8) if requested by the Director. The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

R309-511-7. Hydraulic Model Design Elements Report.

The public water system or its agent shall prepare a Hydraulic Model Design Elements Report along with and in support of the certification stated in R309-511-6(1). The Hydraulic Model Design Elements Report shall contain, and is not limited to, the following elements:

(1) If the public drinking water system provides water for outdoor use, the report must describe the criteria used to estimate this demand. If the irrigation demand map in R309-510-7(3) is not used, the report shall provide justification for the alternative demands used in the model. If the irrigation demands are based on the map in R309-510-7(3) the report must identify the irrigation zone number, a statement and/or map of how the irrigated acreage is spatially distributed, and the total estimated irrigated acreage. The indicated irrigation demands must be used in the model simulations.

(2) The total number of connections served by the water system including existing connections and anticipated new connections served by the water system after completion of the construction of the project.

(3) The total number of equivalent residential connections (ERC) including both existing connections as well as anticipated new connections associated with the project. The number of ERC's must include high as well as low volume water users. The determination of the equivalent residential connections shall be based on flow requirements using the anticipated demand as outlined in R309-510, or based on alternative sources of information that are deemed acceptable by the Director.

(4) Provide methodology used for calculating demand and allocating it to the model; a summary of pipe length by diameter; a hydraulic schematic of the distribution piping showing pressure zones, general pipe connectivity between facilities and pressure zones, storage, elevation and sources; and a list or ranges of values of friction coefficient used in the hydraulic model according to pipe material and condition in the system. All coefficients of friction used in the hydraulic analysis shall be consistent with standard practices.

(5) A statement stating either "yes fire hydrants exist or will exist within the system" or "there are no fire hydrants connected to the system and there is no plan to add fire hydrants with this project." Either statement will require the identification of the local fire authority's name, address, and contact information, as well as the fire flow quantity and duration if required.

(6) The locations of the lowest pressures within the distribution system, and areas identified by the hydraulic model as not meeting each scenario of the minimum pressure requirements in R309-105-9.

(7) Calibration method and quantitative summary of the calibration results (i.e., comparison tables, graphs).

R309-511-8. System Capacity and Expansion Report.

The public water system or its agent may be required to prepare a System Capacity and Expansion Report along with a Hydraulic Model Design Elements Report, as specified above, in support of the certification. It is intended that the System Capacity and Expansion Report be prepared, maintained, and used by the public water system's management to make informed decisions about its capability to provide water service to future customers and need only be submitted to the Division if requested by the Director. The System Capacity and Expansion Report shall consist of the elements described in

R309-110-4 under the definition of "Master Plan" and shall be updated if significant growth or changes to the water system have occurred.

KEY: drinking water, hydraulic modeling
August 28, 2013

19-4-104

R309. Environmental Quality, Drinking Water.**R309-515. Facility Design and Operation: Source Development.****R309-515-1. Purpose.**

This rule specifies requirements for public drinking water sources. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water that consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-515-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-515-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-515-4. General.**(1) Issues to be Considered.**

The selection, development and operation of a public drinking water source must be done in a manner which will protect public health and assure that all required water quality standards, as described in R309-200, are met.

(2) Communication with the Division.

Because of the issues described above in (1), engineers are advised to work closely with the Division to help assure that sources are properly sited, developed and operated.

(3) Number of Sources and Quantity Requirements.

Community water systems established after January 1, 1998 serving more than 100 connections shall have a minimum of two sources, except where served by a water treatment plant. Community Water Systems established prior to that date, currently serving more than 100 connections, shall obtain a separate source no later than January 1, 2000. For all systems, the total developed source capacity(ies) shall equal or exceed the peak day demand of the system. Refer to R309-510-7 of these rules for procedure to estimate the peak day demand.

(4) Quality Requirements.

In selecting a source of water for development, the designing engineer shall demonstrate to the satisfaction of the Director that the source(s) selected for use in public water systems are of satisfactory quality, or can be treated in a manner so that the quality requirements of R309-200 can be met.

(5) Initial Analyses.

All new drinking water sources, unless otherwise noted below, shall be analyzed for the following:

(a) All the primary and secondary inorganic contaminants listed in R309-200, Table 200-1 and Table 200-5 (excluding Asbestos unless it would be required by R309-205-5(2)),

(b) Ammonia as N; Boron; Calcium; Chromium, Hex as Cr; Copper; Lead; Magnesium; Potassium; Turbidity, as NTU; Specific Conductivity at 25 degrees Celsius, u mhos/cm; Bicarbonate; Carbon Dioxide; Carbonate; Hydroxide; Phosphorous, Ortho as P; Silica, dissolved as SiO₂; Surfactant as MBAS; Total Hardness as CaCO₃; and Alkalinity as CaCO₃,

(c) Pesticides, PCB's and SOC's as listed in R309-200-5(3)(a), Table 200-2 unless the system is a transient non-community pws or, if a community pws or non-transient non-community pws, they have received waivers in accordance with R309-205-6(1)(f). The following six constituents have been excused from monitoring in the State by the EPA,

dibromochloropropane, ethylene dibromide, Diquat, Endothall, glyphosate and Dioxin,

(d) VOC's as listed in R309-200-5(3)(b), Table 200-3 unless the system is a transient non-community pws, and

(e) Radiologic chemicals as listed in R309-200-5(4) unless the system is a non-transient non-community pws or a transient non-community pws.

All analyses shall be performed by a certified laboratory as required by R309-205-4 (Specially prepared sample bottles are required),

(6) Source Classification.

Subsection R309-505-7(1)(a)(i) provides information on the classification of water sources. The Director shall classify all existing or new sources as either:

(a) Surface water or ground water under direct influence of surface water which will require conventional surface water treatment or an approved equivalent, or as

(b) Ground water not under the direct influence of surface water.

(7) Latitude and Longitude.

The latitude and longitude, to at least the nearest second, or the location by section, township, range, and course and distance from an established outside section corner or quarter corner of each point of diversion shall be submitted to the Director prior to source approval.

R309-515-5. Surface Water Sources.**(1) Definition.**

A surface water source, as is defined in R309-110, shall include, but not be limited to tributary systems, drainage basins, natural lakes, artificial reservoirs, impoundments and springs or wells which have been classified as being directly influenced by surface water. Surface water sources will not be considered for culinary use unless they can be rendered acceptable by conventional surface water treatment or other equivalent treatment techniques acceptable to the Director.

(2) Pre-design Submittal.

The following information must be submitted to the Director and approved in writing before commencement of design of diversion structures and/or water treatment facilities:

(a) A copy of the chemical analyses required by R309-200 and described in R309-515-4(5) above, and

(b) A survey of the watershed tributary to the watercourse along which diversion structures are proposed. The survey shall include, but not be limited to:

(i) determining possible future uses of impoundments or reservoirs,

(ii) the present stream classification by the Division of Water Quality, any obstacles to having stream(s) reclassified 1C, and determining degree of watershed control by owner or other agencies,

(iii) assessing degree of hazard to the supply by accidental spillage of materials that may be toxic, harmful or detrimental to treatment processes,

(iv) obtaining samples over a sufficient period of time to assess the microbiological, physical, chemical and radiological characteristics and variations of the water,

(v) assessing the capability of the proposed treatment process to reduce contaminants to applicable standards, and

(vi) consideration of currents, wind and ice conditions, and the effect of tributary streams at their confluence.

(3) Pre-construction Submittal.

Following approval of a surface water source, the following additional information must be submitted for review and approval prior to commencement of construction:

(a) Evidence that the water system owner has a legal right to divert water from the proposed source for domestic or municipal purposes;

(b) Documentation regarding the minimum firm yield

which the watercourse is capable of producing (see R309-515-5(4)(a) below; and

(c) Complete plans and specifications and supporting documentation for the proposed treatment facilities so as to ascertain compliance with R309-525 or R309-530.

(4) Quantity.

The quantity of water from surface sources shall:

(a) Be assumed to be no greater than the low flow of a 25 year recurrence interval or the low flow of record for these sources when 25 years of records are not available;

(b) Meet or exceed the anticipated peak day demand for water as estimated in R309-510-7 and provide a reasonable surplus for anticipated growth; and

(c) Be adequate to compensate for all losses such as silting, evaporation, seepage, and sludge disposal which would be anticipated in the normal operation of the treatment facility.

(5) Diversion Structures.

Design of intake structures shall provide for:

(a) Withdrawal of water from more than one level if quality varies with depth;

(b) Intake of lowest withdrawal elevation located at sufficient depth to be kept submerged at the low water elevation of the reservoir;

(c) Separate facilities for release of less desirable water held in storage;

(d) Occasional cleaning of the inlet line;

(e) A diversion device capable of keeping large quantities of fish or debris from entering an intake structure; and

(f) Suitable protection of pumps where used to transfer diverted water (refer to R309-540-5).

(6) Impoundments.

The design of an impoundment reservoir shall provide for, where applicable:

(a) Removal of brush and trees to the high water level;

(b) Protection from floods during construction;

(c) Abandonment of all wells which may be inundated (refer to applicable requirements of the Division of Water Rights); and

(d) Adequate precautions to limit nutrient loads.

R309-515-6. Ground Water - Wells.

(1) Required Treatment.

If properly developed, water from wells may be suitable for culinary use without treatment. A determination as to whether treatment may be required can only be made after the source has been developed and evaluated.

(2) Standby Power.

Water suppliers, particularly community water suppliers, should assess the capability of their system in the event of a power outage. If gravity fed spring sources are not available, one or more of the system's well sources shall be equipped for operation during power outages. In this event:

(a) To ensure continuous service when the primary power has been interrupted, a power supply shall be provided through connection to at least two independent public power sources, or portable or in-place auxiliary power available as an alternative; and

(b) When automatic pre-lubrication of pump bearings is necessary, and an auxiliary power supply is provided, the pre-lubrication line shall be provided with a valved by-pass around the automatic control, or the automatic control shall be wired to the emergency power source.

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well commences, the well driller must receive a start card from the State Engineer's Office. For public drinking water supply wells the rules of R655-4 still apply and must be followed in addition to these rules.

(4) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a well location shall only be made after consideration of the requirements of R309-600. Sources shall be located in an area which will minimize threats from existing or potential sources of pollution.

Generally, sewer lines may not be located within zone one and zone two of a public drinking water system's source protection zones. However, if the following precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zone one and zone two. Sewer lines shall meet the conditions identified in R309-600-13(3), and shall be specially constructed throughout zone one in aquifers classified as protected, and zones one and two, if the aquifer is classified as unprotected, as follows:

(a) sewer lines shall be constructed to remain watertight. The lines shall be deflection tested in accordance with the Division of Water Quality Rule R317-3. The lines shall be video inspected for any defect following completion of construction and before being placed in service. The sewer pipe material shall be:

(i) high density polyethylene (HDPE) pipe with a PE3408 or PE4710 rating from the Plastic Pipe Institute and have a Dimension Ratio (DR) of 17 or less, and all joints shall be fusion welded, or

(ii) polyvinyl chloride (PVC) pipe meeting AWWA Specification C900 or C905 and have a DR of 18 or less. PVC pipe shall be either restrained gasketed joints or shall be fusion welded. Solvent cement joints shall not be acceptable. The PVC pipe shall be clearly identified when installed, by marking tape or other means as a sanitary sewer line, or

(iii) ductile iron pipe with ceramic epoxy lining, polyethylene encasement, restrained joints, and a minimum pressure class of 200.

(b) procedures for leakage tests shall be specified and comply with Division of Water Quality Rule R317-3 requirements.

(c) lateral to main connection shall be fusion welded, shop fabricated, or saddled with a mechanical clamping watertight device designed for the specific pipe;

(d) inlet and outlet sewer pipes shall be joined to a manhole with a gasketed flexible watertight connection;

(e) the sewer pipe shall be laid with no greater than 2 percent deflection at any joint;

(f) backfill shall be compacted to not less than 95 percent of maximum laboratory density as determined in accordance with ASTM Standard D-690;

(g) sewer manholes shall meet the following requirements:

(i) the manholes shall be constructed of reinforced concrete;

(ii) manhole base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be fabricated in a single concrete pour without joints; and

(iii) the manholes shall be air pressure tested after installation.

(h) in unprotected aquifers, an impermeable cutoff wall shall be constructed in all sewer trenches on the up-gradient edge of zone two. In protected aquifers, an impermeable cutoff wall shall be constructed in all sewer trenches on the up-gradient edge of zone one.

(5) Outline of Well Approval Process.

(a) Well drilling shall not commence until both of the following items are submitted and receive a favorable review:

(i) a Preliminary Evaluation Report on source protection issues as required by R309-600-13, and

(ii) engineering plans and specifications governing the well drilling, prepared by a licensed well driller holding a

current Utah Well Drillers Permit if previously authorized by the Director or prepared, signed and stamped by a licensed professional engineer or professional geologist licensed to practice in Utah.

(b) Grouting Inspection During Well Construction.

(i) Authorized Individuals

(A) The following individuals are authorized to witness the well sealing procedure for a public drinking water well:

(I) An engineer or a geologist from the Division of Drinking Water,

(II) A district engineer of the Department of Environmental Quality,

(III) An authorized representative of the Division of Water Rights, or

(IV) An individual having written authorization from the Director and meeting the below listed criteria.

(B) At the time of the well sealing an individual, who is authorized per (i)(A)(IV), shall present to the well driller a copy of the letter authorizing him or her to witness a well sealing on behalf of the Division of Drinking Water. A copy of this letter shall be appended to the witness certification letter.

(C) At least three days before the anticipated well grouting the well driller shall arrange for an authorized witness listed in (i)(A) above to witness the procedure. (See R309-515-6(6)(i)).

(ii) Obtaining Authorization

(A) To be authorized per (i)(A)(IV) above to witness a well sealing procedure, an individual must have no relationship to the driller or the well's owner and have at least five years professional experience designing wells, supervising well drilling or other equivalent experience associated with well drilling or well sealing that are acceptable to the Director.

(B) Individuals, desiring the Director's authorization to witness a well grouting procedure, shall provide the following information to the Director for review over his or her signature attesting to the correctness of the information:

(I) A detailed description of the applicant's experience with well drilling projects, including number of years of experience and type of work. Three references confirming this professional experience are required.

(II) Evidence of licensure as a professional engineer or professional geologist in Utah.

(III) No relationship may exist between a person authorized to witness well sealings and a well driller that would serve as the basis for suspicion of favoritism, leniency or punitive action in the performance of this task. Examples of such relationships would be: family; former long term employment; business partnerships, either formal or informal; etc. The Director's decision, with right of appeal as provided in R305-7, shall be accepted relative to what constitutes a conflict of interest or a relationship sufficient to disqualify an applicant from all or specific witness opportunities.

(IV) An acknowledgement that he/she would not be acting as an agent or employee of the State of Utah and any losses incurred while acting as a witness would not be covered by governmental immunity or Utah's insurance.

(VI) Willingness to follow established protocols and attend such training events as may be required by the Director.

(VII) Complete with a minimum 75% passing grade, an examination on water well drilling rules, as offered by the Division of Water Rights.

(C) The Director may rescind the authorization if an individual fails to comply with the criteria or conditions of authorization listed above.

(iii) Well Seal Certification

The individual witnessing the well sealing procedure shall provide a signed letter to the Director within 30 days of the well sealing including the following:

(A) Certification that the well sealing procedure met all the requirements of Rule R309-515-6(6)(i);

(B) The water right under which the well was drilled and the well driller's license number;

(C) The public water system name (if applicable);

(D) The latitude and longitude of the well and method used for its determination;

(E) The well head's approximate elevation;

(F) Casing diameter(s), length(s), and material(s);

(G) The size of the annulus between the borehole and casing;

(H) A description of the sealing process including the sealing material used, its volume, density, method of placement, and depth from surface; and

(I) The names and company affiliations of other individuals observing the sealing procedure including, but not limited to the well driller, the well owner, and/or a consultant.

(c) After completion of the well drilling the following information shall be submitted and receive a favorable review before water from the well can be introduced into a public water system:

(i) a copy of the "Report of Well Driller" as required by the State Engineer's Office which is complete in all aspects and has been stamped as received by the same;

(ii) a copy of the letter from the authorized individual described in R309-515-6(5)(b) above, indicating inspection and confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

(iii) a copy of the pump test including the yield vs. drawdown test as described in R309-515-6(10)(b) along with comments / interpretation by a licensed professional engineer or licensed professional geologist of the graphic drawdown information required by R309-515-6(b)(vi)(E);

(iv) a copy of the chemical analyses required by R309-515-4(5);

(v) documentation indicating that the water system owner has a right to divert water for domestic or municipal purposes from the well source;

(vi) a copy of complete plans and specifications prepared, signed and stamped by a licensed professional engineer covering the well housing, equipment and diversion piping necessary to introduce water from the well into the distribution system; and

(vii) a bacteriological analysis of water obtained from the well after installation of permanent equipment, disinfection and flushing.

(d) An Operation Permit shall be obtained in accordance with R309-500-9 before any water from the well is introduced into a public water system.

(6) Well Materials, Design and Construction.

(a) ANSI/NSF Standards 60 and 61 Certification.

All interior surfaces must consist of products complying with ANSI/NSF Standard 61. This requirement applies to drop pipes, well screens, coatings, adhesives, solders, fluxes, pumps, switches, electrical wire, sensors, and all other equipment or surfaces which may contact the drinking water.

All substances introduced into the well during construction or development shall be certified to comply with ANSI/NSF Standard 60. This requirement applies to drilling fluids (biocides, clay thinners, defoamers, foamers, loss circulation materials, lubricants, oxygen scavengers, viscosifiers, weighting agents) and regenerants. This requirement also applies to well grouting and sealing materials which may come in direct contact with the drinking water.

(b) Permanent Steel Casing Pipe shall:

(i) be new single steel casing pipe meeting AWWA Standard A-100, ASTM or API specifications and having a minimum weight and thickness as given in Table 1 found in R655-4-9.4 of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted January 1, 2001, Division of Water Rights);

(ii) have additional thickness and weight if minimum thickness is not considered sufficient to assure reasonable life expectancy of the well;

(iii) be capable of withstanding forces to which it is subjected;

(iv) be equipped with a drive shoe when driven;

(v) have full circumferential welds or threaded coupling joints; and

(vi) project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level. At sites subject to flooding the top of the well casing shall terminate at least three feet above the 100 year flood level or the highest known flood elevation, whichever is higher.

(c) Non-Ferrous Casing Material.

The use of any non-ferrous material for a well casing shall receive prior approval of the Director based on the ability of the material to perform its desired function. Thermoplastic water well casing pipe shall meet ANSI/ASTM Standard F480-76 and shall bear the logo NSF-wc indicating compliance with NSF Standard 14 for use as well casing.

(d) Disposal of Cuttings.

Cuttings and waste from well drilling operations shall not be discharged into a waterway, lake or reservoir. The rules of the Utah Division of Water Quality must be observed with respect to these discharges.

(e) Packers.

Packers, if used, shall be of material that will not impart taste, odor, toxic substances or bacterial contamination to the well water. Lead, or partial lead packers are specifically prohibited.

(f) Screens.

The use of well screens is recommended where appropriate and, if used, they shall:

(i) be constructed of material resistant to damage by chemical action of groundwater or cleaning operations;

(ii) have size of openings based on sieve analysis of formations or gravel pack materials;

(iii) have sufficient diameter to provide adequate specific capacity and low aperture entrance velocities;

(iv) be installed so that the operating water level remains above the screen under all pumping conditions; and

(v) be provided with a bottom plate or washdown bottom fitting of the same material as the screen.

(g) Plumbness and Alignment Requirements.

Every well shall be tested for plumbness and vertical alignment in accordance with AWWA Standard A100. Plans and specifications submitted for review shall:

(i) have the test method and allowable tolerances clearly stated in the specifications. and

(ii) clearly indicate any options the design engineer may have if the well fails to meet the requirements. Generally wells may be accepted if the misalignment does not interfere with the installation or operation of the pump or uniform placement of grout.

(h) Casing Perforations.

The placement of perforations in the well casing shall:

(i) be so located to permit as far as practical the uniform collection of water around the circumference of the well casing, and

(ii) be of dimensions and size to restrain the water bearing soils from entrance into the well.

(i) Grouting Techniques and Requirements.

For all public drinking water wells the annulus between the outermost well casing and the borehole wall shall be grouted to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Director (see R309-500-4(1)). If more than one casing is used, including a conductor casing, the annulus between the outermost casing and the next inner casing

shall be sealed with grout (meeting the grouting materials requirements of R309-515-6(i)(ii) herein) or with a water tight steel ring having a thickness equal to that of the permanent well casing and continuously welded to both casings.

If a well is to be considered in a protected aquifer the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective layer, as described in R309-600-6(1)(x) (see also R309-515-6(6)(i)(iii)(D) below).

The following applies to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the outermost permanent casing and the drilled hole, taking into consideration any joint couplings.

(B) Additional information is available from the Division for recommended construction methods for grout placement.

(C) The casing(s) must be provided with sufficient guides welded to the casing to permit unobstructed flow and uniform thickness of grout.

(ii) Grouting Materials.

(A) Neat Cement Grout.

Cement, conforming to ASTM Standard C150, and water, with no more than six gallons of water per sack of cement, shall be used for two inch openings. Additives may be used to increase fluidity subject to approval by the Director.

(B) Concrete Grout.

Equal parts of cement conforming to ASTM Standard C150, and sand, with not more than six gallons of water per sack of cement may be used for openings larger than two inches.

(C) Clay Seal.

Where an annular opening greater than six inches is available a seal of swelling bentonite meeting the requirements of R655-4-9.4.2 may be used when approved by the Director.

(iii) Application.

(A) When the annular opening is less than four inches, grout shall be installed under pressure, by means of a positive displacement grout pump, from the bottom of the annular opening to be filled.

(B) When the annular opening is four or more inches and 100 feet or less in depth, and concrete grout is used, it may be placed by gravity through a grout pipe installed to the bottom of the annular opening in one continuous operation until the annular opening is filled.

(C) All temporary construction casings shall be removed prior to or during the well sealing operation. Any exceptions shall be approved by the State Engineer and evidence of approval submitted to the Director (see R655-4-9.4.3.1 for conditions surrounding leaving temporary surface casing in place. A temporary construction casing is a casing not intended to be part of the permanent well.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-600-6(1)(x)).

(E) After cement grouting is applied, work on the well shall be discontinued until the cement or concrete grout has properly set; usually a period of 72 hours.

(j) Water Entered Into Well During Construction.

Any water entering a well during construction shall not be contaminated and should be obtained from a chlorinated municipal system. Where this is not possible the water must be dosed to give a 100 mg/l free chlorine residual. Refer also to the administrative rules of the Division of Water Rights in this regard.

(k) Gravel Pack Wells.

The following shall apply to gravel packed wells:

(i) the gravel pack material is to be of well rounded

particles, 95 percent siliceous material, that are smooth and uniform, free of foreign material, properly sized, washed and then disinfected immediately prior to or during placement,

(ii) the gravel pack is placed in one uniform continuous operation,

(iii) refill pipes, when used, are Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron,

(iv) refill pipes located in the grouted annular opening be surrounded by a minimum of 1.5 inches of grout,

(v) protection provided to prevent leakage of grout into the gravel pack or screen, and

(vi) any casings not withdrawn entirely meet requirements of R309-515-6(6)(b) or R309-515-6(6)(c).

(7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud or finer fraction of the gravel pack.

(b) Development should continue until the maximum specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used the specifications shall include the provisions for blasting and cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

(8) Capping Requirements.

(a) A welded metal plate or a threaded cap is the preferred method for capping a completed well until permanent equipment is installed.

(b) At all times during the progress of work the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

(9) Well Abandonment.

(a) Test wells and groundwater sources which are to be permanently abandoned shall be sealed by such methods as necessary to restore the controlling geological conditions which existed prior to construction or as directed by the Utah Division of Water Rights.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Preference shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned well is filled with cement- grout or concrete, these materials shall be applied to the well- hole through a pipe, tremie, or bailer.

(10) Well Assessment.

(a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the desired intake setting.

(b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after construction or subsequent treatment and prior to placement of the permanent pump,

(ii) have the test methods clearly indicated in the specifications,

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping in excess of the desired design discharge rate,

(iv) provide for continuous pumping for at least 24 hours

or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to the desired design discharge rate,

(v) provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve),

(B) static water level (in feet to the nearest tenth, as measured from an identified datum; usually the top of casing),

(C) depth of test pump intake,

(D) time and date of starting and ending test(s),

(vi) For the "constant-rate" test provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required below:

(A) record the time since starting test (in minutes),

(B) record the actual pumping rate,

(C) record the pumping water level (in feet to the nearest tenth, as measured from the same datum used for the static water level),

(D) record the drawdown (pumping water level minus static water level in feet to the nearest tenth),

(E) provide graphic evaluation on semi-logarithmic graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale, and

(vii) Immediately after termination of the constant-rate test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest tenth, as measured from the same datum used for the pumping water level).

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA Standard C654 published by the American Water Works Association as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and comes in contact with equipment installed in the well. This solution shall remain in the well for a period of at least eight hours, and

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves,

(ii) be provided with permanent casing and sealed by grout,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Director.

(b) Line Shaft Pumps.

Wells equipped with line shaft pumps shall:

(i) have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base,

(ii) have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing,

(iii) be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown

elevation,

(iv) avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-105-10(7) and/or R309-515-8(2) for additional requirements of lubricants).

(c) Submersible Pumps.

Where a submersible pump is used:

(i) The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables.

(ii) The electrical cable shall be firmly attached to the riser pipe at 20 foot intervals or less.

(iv) The intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

(d) Pitless Well Units and Adapters.

If the excavation surrounding the well casing allowing installation of the pitless unit compromises the surface seal the competency of the surface seal shall be restored. Torch cut holes in the well casing shall be to neat lines closely following the outline of the pitless adapter and completely filled with a competent weld with burrs and fins removed prior to the installation of the pitless unit and adapter.

Pitless well units and adapters shall:

(i) not be used unless the specific application has been approved by the Director,

(ii) be used to make a connection to a water well casing that is made below the ground. A below the ground connection shall not be submerged in water during installation,

(iii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation whichever is greater,

(iv) pitless adapters or pitless units to be used shall contain a label or imprint indicating compliance with the Water Systems Council Pitless Adapter Standard (PAS-97),

(v) have suitable access to the interior of the casing in order to disinfect the well,

(vi) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or contamination, especially at the connection point of the electrical cables,

(vii) have suitable access so that measurements of static and pumped water levels in the well can be obtained,

(viii) allow at least one check valve within the well casing,

(ix) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage,

(x) be shop-fabricated from the point of connection with the well casing to the unit cap or cover,

(xi) be of watertight construction throughout,

(xii) be constructed of materials at least equivalent to and having wall thickness compatible to the casing,

(xiii) have field connection to the lateral discharge from the pitless unit of threaded, flanged or mechanical joint connection,

(xiv) be threaded or welded to the well casing. If the connection to the casing is by field weld, the shop assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit will be that needed to connect a pitless unit to the casing, and

(xv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(e) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low,

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided,

(iii) be protected against the entrance of contamination,

(iv) be equipped with (in order of placement from the well head) a smooth nosed sampling tap, a check valve, a pressure

gauge, a means of measuring flow and a shutoff valve,

(v) where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the floor and covered with a No. 14 mesh corrosion resistant screen. An exception to this requirement will be allowed provided specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system,

(vi) have all exposed piping valves and appurtenances protected against physical damage and freezing,

(vii) be properly anchored to prevent movement, and

(f) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed in such a manner as to prevent entrance of foreign materials.

(g) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well, and

(ii) protected at the upper terminal to preclude entrance of foreign materials.

(h) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-540, well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a drain to daylight sized to handle in excess of the well flow and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm.

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Director.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least 3 feet above the 100 year flood level or the highest known flood elevation, whichever is higher (refer to R309-515-6(6)(b)(vi)).

(e) Miscellaneous.

The well house shall be ventilated, heated and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-540-5(2) (a) through (h)).

(f) Fencing.

Where necessary to protect the quality of the well water the Director may require that certain wells be fenced in a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house

roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

R309-515-7. Ground Water - Springs.

(1) General.

Springs vary greatly in their characteristics and they should be observed for some time prior to development to determine any flow and quality variations. Springs determined to be "under the direct influence of surface water" will have to be given "surface water treatment".

(2) Source Protection.

Public drinking water systems are responsible for protecting their spring sources from contamination. The selection of a spring shall only be made after consideration of the requirements of R309-515-4. Springs must be located in an area which shall minimize threats from existing or potential sources of pollution. A Preliminary Evaluation Report on source protection issues is required by R309-600-13(2). If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Director. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as described in R309-515-6(4).

(3) Surface Water Influence.

Some springs yield water which has been filtered underground for years, other springs yield water which has been filtered underground only a matter of hours. Even with proper development, the untreated water from certain springs may exhibit turbidity and high coliform counts. This indicates that the spring water is not being sufficiently filtered in underground travel. If a spring is determined to be "under the direct influence of surface water", it shall be given "conventional surface water treatment" (refer to R309-505-6).

(4) Pre-construction Submittal

Before commencement of construction of spring development improvements the following information must be submitted to the Director and approved in writing.

(a) Detailed plans and specifications covering the development work.

(b) A copy of an engineer's or geologist's statement indicating:

(i) the historical record (if available) of spring flow variation,

(ii) expected minimum flow and the time of year it will occur,

(iii) expected maximum flow and the time of year it will occur,

(iv) expected average flow,

(v) the behavior of the spring during drought conditions.

After evaluating this information, the Division will assign a "firm yield" for the spring which will be used in assessing the number of and type of connections which can be served by the spring (see "desired design discharge rate" in R309-110).

(c) A copy of documentation indicating the water system owner has a right to divert water for domestic or municipal purposes from the spring source.

(d) A Preliminary Evaluation Report on source protection issues as required by R309-600-13.

(e) A copy of the chemical analyses required by R309-515-4(5).

(f) An assessment of whether the spring is "under the direct influence of surface water" (refer to R309-505-7(1)(a)).

(5) Information Required after Spring Development.

After development of a culinary spring, the following information shall be submitted:

(a) Proof of satisfactory bacteriologic quality.

(b) Information on the rate of flow developed from the spring.

(c) As-built plans of spring development.

(6) Operation Permit Required.

Water from the spring can be introduced into a public water system only after it has been approved for use, in writing, by the Director (see R309-500-9).

(7) Spring Development.

The development of springs for drinking water purposes shall comply with the following requirements:

(a) The spring collection device, whether it be collection tile, perforated pipe, imported gravel, infiltration boxes or tunnels must be covered with a minimum of ten feet of relatively impervious soil cover. Such cover must extend a minimum of 15 feet in all horizontal directions from the spring collection device. Clean, inert, non-organic material shall be placed in the vicinity of the collection device(s).

(b) Where it is impossible to achieve the ten feet of relatively impervious soil cover, an acceptable alternate will be the use of an impermeable liner provided that:

(i) the liner has a minimum thickness of at least 40 mils,

(ii) all seams in the liner are folded or welded to prevent leakage,

(iii) the liner is certified as complying with ANSI/NSF Standard 61. This requirement is waived if certain that the drinking water will not contact the liner,

(iv) the liner is installed in such a manner as to assure its integrity. No stones, two inch or larger or sharp edged, shall be located within two inches of the liner,

(v) a minimum of two feet of relatively impervious soil cover is placed over the impermeable liner,

(vi) the soil and liner cover are extended a minimum of 15 feet in all horizontal directions from the collection devices.

(c) Each spring collection area shall be provided with at least one collection box to permit spring inspection and testing.

(d) All junction boxes and collection boxes, must comply with R309-545 with respect to access openings, venting, and tank overflow. Lids for these spring boxes shall be gasketed and the box adequately vented.

(e) The spring collection area shall be surrounded by a fence located a distance of 50 feet (preferably 100 feet if conditions allow) from all collection devices on land at an elevation equal to or higher than the collection device, and a distance of 15 feet from all collection devices on land at an elevation lower than the collection device. The elevation datum to be used is the surface elevation at the point of collection. The fence shall be at least "stock tight" (see R309-110). In remote areas where no grazing or public access is possible, the fencing requirement may be waived by the Director. In populated areas a six foot high chain link fence with three strands of barbed wire may be required.

(f) Within the fenced area all vegetation which has a deep root system shall be removed.

(g) A diversion channel, or berm, capable of diverting all anticipated surface water runoff away from the spring collection area shall be constructed immediately inside the fenced area.

(h) A permanent flow measuring device shall be installed. Flow measurement devices such as critical depth meters or weirs shall be properly housed and otherwise protected.

(i) The spring shall be developed as thoroughly as possible so as to minimize the possibility of excess spring water ponding within the collection area. Where the ponding of spring water is unavoidable, the excess shall be collected by shallow piping or french drain and be routed beyond and down grade of the fenced area required above, whether or not a fence is in place.

R309-515-8. Operation and Maintenance.

(1) Spring Collection Area Maintenance.

(a) Spring collection areas shall be periodically (preferably annually) cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent

hand or mechanical clearing of spring collection areas and diversion channel is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Director. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development construction meets the requirements of these rules.

(2) Pump Lubricants.

The U.S. Food and Drug Administration (FDA) has approved propylene glycol and certain types of mineral oil for occasional contact with or for addition to food products. These oils are commonly referred to as "food-grade mineral oils". All oil lubricated pumps shall utilize food grade mineral oil suitable for human consumption as determined by the Director.

(3) Algicide Treatment.

No algicide shall be applied to a drinking water source unless specific approval is obtained from the Director. Such approval will be given only if the algicide is certified as meeting the requirements of ANSI/NSF Standard 60, Water Treatment Chemicals - Health Effects.

KEY: drinking water, source development, source maintenance

August 28, 2013

19-4-104

Notice of Continuation March 22, 2010

R309. Environmental Quality, Drinking Water.
R309-520. Facility Design and Operation: Disinfection.
R309-520-1. Purpose.

This rule specifies requirements for facilities that disinfect public drinking water. It is to be applied in conjunction with Rule Series 500, Drinking Water Facility Construction, Design, and Operation, namely, R309-500 through R309-550. Collectively, these Rules govern the design, construction, and operation and maintenance of public drinking water system facilities. These Rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water that consistently meet applicable drinking water quality requirements and do no harm to general public health.

R309-520-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-520-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-520-4. Primary Disinfectants.

Primary disinfection is the means to provide adequate levels of inactivation of pathogenic micro organisms within the treatment process. The effectiveness of chemical disinfectants is measured as a function of the concentration and time of contact, a "CT" value in units such as mg/L-min. The effectiveness of UV disinfection is determined through validation testing of each model and specific configuration of UV reactor proposed in the design, as described in R309-520-8.

Only four disinfectants: chlorine (i.e., gas, hypochlorite solution, and hypochlorite tablets), ozone, ultraviolet light, and chlorine dioxide are approved herein as allowable primary disinfectants of drinking water.

R309-520-5. Secondary Disinfectants.

Secondary disinfection is the means to provide an adequate disinfectant residual in the distribution system to maintain a chemical barrier and to control bacteriological quality of treated water.

The effectiveness of secondary chemical disinfection is measured through maintaining a detectable disinfectant residual throughout the distribution system. Allowable secondary disinfectants are chlorine (gas, hypochlorite solution, and hypochlorite tablets) and chloramine.

R309-520-6. General.

(1) Continuous Disinfection.

Continuous disinfection is required of all ground water sources that do not otherwise continuously meet standards of bacteriologic quality. Intermittent or batch disinfection, commonly used for disinfecting new water tanks, waterlines, well casings, etc., is not acceptable for ongoing drinking water delivery service. Surface water sources, and ground water sources under direct influence (UDI) of surface water, shall be disinfected as a part of the treatment requirements for conventional surface water treatment or alternative surface water treatment.

Disinfection is not an acceptable remedy to inadequate drinking water system facilities. Systems that practice source disinfection, and whose sources are exclusively ground water sources, as defined in R309-505-8, shall meet the requirements of R309-105-10(1), Chemical Addition.

(2) ANSI/NSF Standard 60 Certification.

All chemicals, including chlorine (i.e., gas, hypochlorite

solution, hypochlorite tablets, granules, and powder), chloramines, and chemicals used to generate chlorine dioxide, added to drinking water supplied by a public water system shall be certified as complying with ANSI/NSF Standard 60, Drinking Water Treatment Chemicals.

(3) Appropriate Use of Primary and Secondary Disinfectants.

Surface water, or groundwater under the direct influence of surface water, shall be filtered and disinfected.

Only ground water not under the influence of surface water can be adequately disinfected with primary disinfectants, or primary and secondary disinfectants, alone. Surface waters, as well as ground water under the direct influence of surface water, require conventional surface water treatment or alternative surface water treatment methods.

(4) Required Disinfectant Dose and Contact Time.

Minimum cyst and virus reductions for that approved primary chemical disinfectants must achieve are specified in R309-200-5(7)(a), Disinfection, and reiterated in R309-200-7(2), namely 4-log virus removal or inactivation, 3-log Giardia lamblia cyst removal or inactivation, and 2-log Cryptosporidium removal or inactivation for water sources in bin 1 classification per R309-215-15(11)(c). Minimum doses and contact times for primary chemical disinfectants are standardized as "CT" values as defined in R309-110-4, Definitions.

(5) Site Selection.

Disinfection installations shall be sited to permit convenient year-round access. These installations shall initially be sited with due consideration of possible danger to nearby population and of possible jeopardy from seismic fault zones.

R309-520-7. Chlorine.

(1) General Requirements for all Chlorination Installations.

(a) Chemical Types.

Disinfection by chlorination shall be accomplished by gaseous chlorine or liquid solutions of calcium hypochlorite or sodium hypochlorite.

(b) Feed Equipment.

Solution-feed gas type chlorinators, direct-feed gas type chlorinators or hypochlorite liquid feeders of a positive displacement type shall be provided. Solution-feed gas type chlorinators are preferred. However, for small supplies requiring less than four pounds per day, liquid hypochlorite feed systems are advised.

(c) Chlorine Feed Capacity.

The design of each chlorinator shall permit:

(i) the chlorinator capacity to be such that a free chlorine residual of at least 2 mg/l can be maintained in the system after 30 minutes of contact time during peak demand. The equipment shall be of such design that it will operate accurately over a feeding range of 0.2 mg/l to 2 mg/l.

(ii) assurance that a detectable residual, either combined or free, can be maintained at all times, at all points within the intended area in the distribution system.

(d) Automatic Proportioning.

Automatic proportioning chlorinators shall be required where the rate of flow of the water to be treated or chlorine demand of the water to be treated is not reasonably constant.

(e) Injector/diffuser.

(i) Location. The chlorine solution injector/diffuser shall be compatible with the point of application to provide a rapid and thorough mix with all the water being treated. The center of a pipeline is the preferred application point.

(ii) Equipment. Each injector selected shall be appropriate to the intended point of application with particular attention given to the quantity of chlorine to be added, the maximum injector water flow, the back pressure of the to-be-

treated water flow, the injector operating pressure, and the size of the chlorine solution line. Gauges for measuring water pressure at the inlet and outlet of each injector shall be provided.

(iii) Protection. A suitable screen to prevent small debris from clogging a chlorine injector shall be provided on each water feed line. Provision for flushing of the screen is required.

(f) Contact Time and Point of Application.

(i) Due consideration shall be given to the contact time of the chlorine in water with relation to pH, ammonia, taste producing substances, temperature, biological quality, and other pertinent factors.

(ii) Where possible, the design shall minimize the formation of chloro-organic compounds. At plants treating surface water or ground water under the direct influence of surface water, provisions shall be made for applying chlorine to raw water, applied water, filtered water, and water entering the distribution system.

(iii) When treating ground water, provisions shall be made for applying chlorine to at least a reservoir inlet or transmission pipeline which will provide sufficient contact time.

(iv) Care must be taken to assure that the point of application will, in conjunction with the pipe and tank configuration of the water system, allow required CT values to be achieved prior to the first consumer connection.

(g) Minimization of Chlorinated Overflow.

The chlorinator and associated water delivery facilities shall be designed so as to minimize the release of chlorinated water into the environment, for example, discharge chlorinated water from tank overflows. Such release must comply with rules of Division of Water Quality that pertains to discharge or pollution.

(h) Feed Water Piping.

The chlorinator water supply piping shall be designed to prevent contamination of the treated water supply by make-up water of lesser quality. At all facilities treating surface water, pre-chlorination and post-chlorination systems shall be independent where pre-chlorination chlorine solution make-up water is not finished water. All chlorine solution make-up water shall be at least of equal quality to the water receiving the chlorine solution.

(i) Flow Measurement.

The chlorination system design shall have a means to measure the flow rate of treated water, which is critical to operation of flow-proportioned disinfectant dosing.

(j) Residual Testing Equipment.

Chlorine residual test equipment, in accordance with the analytical methods in "Standard Methods for the Examination of Water and Wastewater," shall be provided and shall be capable of measuring residuals to the nearest 0.1 mg/l in the range below 0.5 mg/l, to the nearest 0.3 mg/l between 0.5 mg/l and 1.0 mg/l and to the nearest 0.5 mg/l above 1.0 mg/l.

(k) Standby and Backup Equipment.

A spare parts kit shall be provided and maintained for all chlorinators to repair parts subject to wear and breakage. If there could be a large difference in feed rates between routine and emergency dosages, multiple gas metering tubes shall be provided, at least one for each dose range, to assure accurate control of the chlorine feed under both routine and emergency conditions. Where chlorination is required for disinfection of a water supply, standby equipment of sufficient capacity shall be available to replace the largest unit in the event of its failure. Standby power shall be available, during power outages, for operation of chlorinators where disinfection of the water supply is required.

(l) Heating, Lighting, Ventilation.

Chlorinator houses shall be heated, lighted and ventilated as necessary to assure proper operation of the equipment and to facilitate its serviceability.

(m) Bypass-to-Waste Capability of Chlorine Disinfection Systems.

A chlorinator bypass, with appropriate turn-out of unchlorinated water, shall be provided to allow the flow to waste for periods when the chlorination system is not operational. This is necessary to prevent unchlorinated water from entering the distribution system. The flow to waste shall be designed such that it does not result in unintended consequences such as flooding or property damage.

(n) Isolation Capability.

Chlorinator isolation plumbing shall be provided such that each chlorinator can be removed from the process train (e.g., during maintenance, power outage, other shutdown, etc.) without allowing otherwise unchlorinated water to bypass the unit and be delivered to the public for consumption.

(2) Additional Requirement for Gas Chlorinators.

(a) Automatic Switch over.

Automatic Switch over of chlorine cylinders shall be provided, where necessary, to assure continuous disinfection.

(b) Injector and Eductor.

Each injector or eductor shall be selected for the point of application with particular attention given to the quantity of chlorine to be added, the maximum injector or eductor water flow, the total discharge back pressure, the injector operating pressure, and the size of the chlorine solution line. Gauges for measuring water pressure at the inlet and outlet of each injector shall be provided.

(c) Gas Scrubbers.

Gas chlorine facilities shall conform with the Uniform Fire Code, Article 80 and the Uniform Building Code, Chapter 9 as they are applied by local jurisdictions in the state. Furthermore, local toxic gas ordinances shall be complied with if they exist.

(d) Heat.

The design of the chlorination room shall assure that the temperature in the room will never fall below 32 degrees F or that temperature required for proper operation of the chlorinator, whichever is greater.

(e) Ventilation.

Chlorination equipment rooms which contain chlorine cylinders, tanks, equipment and gaseous chlorine lines under pressure shall have at least one exhaust fan and shall be constructed and equipped such that:

(i) chlorine room exhaust fan(s), when operating, shall provide at least one complete room air change per minute;

(ii) chlorine room ventilating fan(s) shall take suction inside the chlorine room near the floor, as far as practical from the door and air inlet, and exhaust air out of the room with the point of discharge so located as not to contaminate air inlets of any other rooms or any structures;

(iii) chlorine room air entryways shall be through wall louvers near the ceiling;

(iv) chlorine room air entryway louvers and air exit-way louvers (e.g., on outside faceplate of any floor level exhaust fan) shall have air-tight closure;

(v) separate switches for the chlorine room fans and lights shall be outside of the chlorine room near the entrance to the room, and shall be protected from vandalism; and

(vi) vents from feeders and storage discharge above grade to the outside atmosphere.

(f) Feeder Vent Line.

The vent hose from the feeder shall discharge to the outside atmosphere above grade at a point least susceptible to vandalism and shall have the end covered with a No. 14 mesh non-corrodible screen.

(g) Housing.

Adequate housing shall be provided for the chlorination equipment and for storing the chlorine (see R309-520-10(1)(l) above).

(h) Housing at Water Treatment Plants.

A separate room, referred to as the chlorine room, for chlorine cylinders and feed equipment, shall be provided at all water treatment plants. Chlorine gas feed and storage shall be enclosed in the chlorine room and separated from other operating areas. The chlorine room shall have:

(i) shatter resistant inspection window(s) installed in an interior wall and preferably located so that an operator may read the weighing scales without entering the chlorine room,

(ii) construction such that all openings between the chlorine room and the remainder of the plant are sealed, and

(iii) outward-opening doors equipped with panic bars to facilitate a means of easy and rapid exit to the building exterior.

(iv) floor drains shall be discouraged but, where provided, these floor drains shall discharge to the outside of the building and shall not be connected to other internal or external drain systems.

(i) Cylinder Security.

Full and empty cylinders of liquefied chlorine gas and ammonia gas shall be stored in rooms separate from each other, and shall be:

(i) isolated from operating areas;

(ii) restrained in position to prevent upset from accidental bumping, seismic event or other such circumstance;

(iii) stored in areas not in direct sunlight or not exposed to excessive heat.

(j) Feed Line Routing.

Chlorine feed lines shall not carry pressurized chlorine gas beyond the chlorinator room. Only vacuum lines may be routed to other portions of the building outside the chlorine room. Any openings for these lines must be adequately sealed.

(k) Weighing Scales.

Scales shall be provided for determining chlorine cylinder weight. Scales should be of a corrosion resistant material and should be placed in a location remote from any moisture. Scales shall be accurate enough to indicate loss of weight to the nearest one pound for 150 pound cylinders and to the nearest 10 pounds for one ton cylinders.

(l) Pressure Gauges.

Pressure gauges shall be provided on the inlet and outlet of each chlorine injector. Water pressures at the inlet and outlet of each chlorine injector shall be accurately measured. The preferred location is on the water feed line immediately before the inlet of the chlorine injector and at a point on the water main just ahead of chlorine injection. These locations should give accurate pressure readings while not being subjected to corrosive chlorinated water.

(m) Injector Protection.

A suitable screen to prevent small debris from clogging a chlorine injector shall be provided on the water feed line. Provision for flushing of the screen is required.

(n) Chlorine Vent Line Protection.

A non-corrodible fine mesh (No. 14 or finer) screen shall be placed over the discharge ends of all vent lines. All vent lines shall discharge to the outside atmosphere above grade and at locations least susceptible to vandalism.

(o) Gas Masks.

(i) Respiratory protection equipment, meeting the requirements of the National Institute for Occupational Safety and Health (NIOSH) shall be available where chlorine gas in one-ton cylinders is handled, and shall be stored at a convenient location, but not inside any room where chlorine is used or stored. The units shall use compressed air, have at least a 30 minute capacity, and be compatible with units used by the fire department responsible for the plant.

(ii) Where smaller chlorine cylinders are used, suitable gas masks must be provided.

(p) Chlorine Leak Detection and Repair.

A bottle of Ammonium Hydroxide, 56% ammonia solution, shall be available for chlorine leak detection; where

ton containers are used, a leak repair kit approved by the Chlorine Institute shall be provided. Continuous chlorine leak detection equipment is recommended. Where a leak detector is provided, it shall be equipped with both an audible alarm and a warning light.

(3) Additional Requirement for Hypochlorite Systems.

Disinfection by free chlorine shall be accomplished with stock hypochlorite solutions, hypochlorite solution produced by an on-site generator, or hypochlorite solutions prepared from hypochlorite tablets.

(a) Concentrated Sodium Hypochlorite Solutions.

(i) The concentrated sodium hypochlorite solutions used for drinking water treatment shall be certified as meeting the ANSI/NSF Standard 60.

(ii) Emergency eyewash stations or showers shall be provided at all hypochlorite installations where concentrated (e.g., above 5.25% strength) hypochlorite solutions are handled for dilution by operators or other personnel.

(iii) The storage and injection areas shall be designed to minimize the decay of the strength of the concentrated hypochlorite solution over time, such as minimize excessive heat or direct sunlight.

(b) On-Site Hypochlorite Solutions Generation.

The on-site hypochlorite generation systems used for drinking water treatment shall be certified as meeting the NSF/ANSI Standard 61. Manufacturer recommendations for safety with respect to equipment electrical power and other considerations for the ANSI/NSF Standard 61 certified on-site chlorine generation system shall be followed.

(c) Calcium Hypochlorite.

(i) The calcium hypochlorite tablets, granules, and powder forms, used for drinking water treatment shall be certified as meeting ANSI/NSF Standard 60.

(ii) The calcium hypochlorite dissolution systems for drinking water treatment shall be certified as meeting the ANSI/NSF Standard 61. The Director may grant an exception to this requirement on a case by case basis.

(iii) The design shall allow the calcium hypochlorite tablets to be stored in accordance with safety guidelines by the vendor or manufacturer, for example, in their original containers in a cool, dry, well-ventilated area. The calcium hypochlorite tablets shall not be stored near combustible materials and acids to avoid fire or the release of toxic gases.

(d) Hypochlorite Feed Equipment.

(i) Hypochlorite feed equipment shall generally conform with R309-525-11, Chemical Addition; with R309-525-6 for storage and safe handling; with R309-525-7 for feeder design, location, and control; with R309-525-8 for feeder appurtenances such as pumps, day tanks, bulk storage tanks, and feed lines; and R309-525-9 for make-up water supply and protection.

(ii) The hypochlorite feed equipment for drinking water treatment shall be certified meeting the ANSI/NSF Standard 61. The Director may grant an exception to this requirement on a case by case basis.

R309-520-8. Ultraviolet Light.

(1) General Requirements.

This rule shall apply to the public drinking water systems that use ultraviolet (UV) disinfection for inactivation of *Cryptosporidium*, *Giardia*, and virus. The Director may reduce the requirements of monitoring and reporting on a case by case basis for the water systems that use UV as ancillary means of disinfection and do not claim credit for UV disinfection or for water systems using UV without a SCADA system and treating less than 30 gallons per minute.

Terminology used in this rule is based on the definitions in the EPA Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule (2006

Final UVDGM).

(a) Water systems using surface water or ground water under the influence of surface water shall not use UV as the sole means of disinfection. For these types of water systems, at least one alternative primary disinfectant must be used for virus disinfection, and a secondary disinfectant shall be provided to maintain a disinfectant residual in the distribution system.

(b) The following requirements apply to the water systems that wish to receive credit for UV disinfection:

(i) The water system shall submit a UV plan which clearly identifies the dose monitoring strategy, such as the UV intensity setpoint approach, the calculated dose approach or an alternative approach.

(ii) The water system shall identify the goals for the UV facility as part of a comprehensive disinfection strategy, including target pathogens, target log inactivation, and corresponding required UV dose per Table 215-5 in R309-215-15(19)(d).

(iii) The water system shall submit a UV reactor validation report in accordance with R309-520-8(2), to the Director for review prior to installation of UV facility.

(iv) The water system must demonstrate that the reactor is delivering the required UV dose using a validated dose monitoring system and continue to comply with the monitoring and reporting requirements specified in R309-215-15(19) and (20).

(2) Validation Testing.

The Director may accept a validation report that was conducted based on the 2003 draft UV Disinfection Guidance Manual on a case-by-case basis.

(a) Each model and specific configuration of UV reactor must undergo off-site, full-scale validation testing by an independent third party test facility prior to being approved for use. The validation testing shall be conducted in qualified test facilities that are deemed acceptable by NSF, EPA, or the Director.

(b) Validation testing results shall provide data, including calculations and tables or graphical plots, on dose delivery by the UV reactor under design conditions of flow rate, UV transmittance (UVT), UV intensity, lamp status, power ballast setting, as well as consideration of lamp aging and lamp fouling. The validation report shall demonstrate that the monitoring algorithm is valid over the range expected with the application. The data is used to define the dose monitoring algorithm for the UV reactor and the operating conditions that can be monitored by a utility to ensure that the UV dose required for a given pathogen inactivation credit is delivered.

(c) The UV reactor validation report shall include:

(i) Description of the reactor and validation test set-up, including general arrangement and layout drawings of the reactor and validation test piping arrangement.

(ii) Description of the methods used to empirically validate the reactor.

(iii) Description of the dose monitoring equation for the reactor to achieve the target pathogen inactivation credit and related graphical plots showing how the equation was derived from measured doses obtained through validation testing under varying test conditions.

(iv) Range of validated conditions for flow, UVT, UV dose, and lamp status.

(v) Description and rationale for selecting the challenge organism used in validation testing, and analysis to define operating dose for pathogen inactivation credit.

(vi) Tabulated data, analysis, and Quality assurance/quality control (QA/QC) measures during validation testing.

(vii) A licensed professional engineer's third party oversight certification indicating that the testing and data analyses in the validation report are conducted in a technically

sound manner and without bias.

(viii) The validation report shall be accompanied with completed Checklists 5.1 through 5.5 included in the EPA Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule (2006 Final UVDGM).

(3) Design Criteria

(a) A water system considering UV disinfection shall gather sufficient water quality data prior to design. The water samples shall be representative of the source water to be treated by the UV facility. Frequent testing may be required if significant variation or seasonal trending in water quality is expected.

(b) The following water quality parameters shall be considered in UV facility planning:

(i) UV Transmittance or UV Absorbance

(ii) Calcium

(iii) Alkalinity

(iv) Hardness

(v) Iron

(vi) Manganese

(vii) Turbidity

(viii) pH

(ix) Oxidation-Reduction Potential (ORP)

(x) Particle content and algae

(c) The design flow rate and UVT used to size the UV system shall be selected to provide the required dose at least 95 percent of the time, accounting for seasonal variations of flow and UVT combinations. Specifying a matrix of flow and UVT conditions for the UV reactors may be necessary.

(d) The water system may consider increasing the delivered dose beyond the required UV dose listed in Table 215-5 in R309-215-15(19)(d) to provide flexibility and conservatism.

(e) UV reactor inlet and outlet configurations shall meet the validated hydraulic distribution of flow conditions or be more hydraulically conservative. This can be achieved using one of the following approaches:

(i) The inlet and outlet configuration shall meet one of the conditions specified in Section 3.6.2 of the 2006 Final UVDGM.

(ii) Computational fluid dynamics (CFD)-based modeling may be used to demonstrate that the given conditions of inlet and outlet piping with the UV installation provides equal or greater dose delivery. The CFD modeling shall be conducted at the minimum and maximum values of the validated range of flow, UVT, and lamp status.

(f) The UV disinfection system shall be capable of applying the required design dose with a failed or out-of-service reactor. The design shall account for an on-line backup UV reactor or an operating scheme to apply the design dose with one reactor out of service.

(g) It shall be possible to isolate each reactor for maintenance.

(h) Signals and alarms shall be provided for the operation of the UV facility for the parameters necessary for dose monitoring algorithm, such as low UV dose, high flow rate, low UVT, UVT monitoring failure, UV sensor failure, off specification event, Ground Fault Interrupt (GFI), high water temperature, and low water level.

(i) All materials used in constructing or coating the UV reactors that come in contact with water shall be certified NSF Standard 61 - Drinking Water System Components - Health Effects.

(j) Any chemicals used in the cleaning of the UV reactor components in contact with the drinking water such as quartz sleeves shall be certified as meeting the ANSI/NSF Standard 60 - Drinking Water Treatment Chemicals - Health Effects.

(k) A flow or time delay shall be provided to permit a

sufficient time for tube warm-up, per manufacturer recommendations, before water flows from the unit upon start up. The flow or time delay shall be included in the design so they do not result in excessive off specification conditions.

(l) To ensure a continuous supply of power, a backup power supply of sufficient capacity shall be provided for the UV disinfection system. If power quality problems, such as frequent power interruptions or brownouts, or remote location with unknown power quality, is anticipated, power conditioning equipment, such as uninterruptible power supply (UPS), shall be included in the design.

(m) The design shall include a redundant disinfection mechanism that will apply an approved primary disinfectant to achieve the CT or log removal/inactivation required for compliance if a UV facility is off specification or offline within a maximum response time of 15 minutes. One example of such response is to shut down the off- specification UV train and either bring a parallel UV train on line or initiate a back-up primary disinfection system within 15 minutes, so the continuous duration of an off- specification event is limited to no more than 15 minutes.

(n) UV disinfection units rated at 30 gallons per minute or less shall be certified as meeting the ANSI/NSF Standard 55, Class A, or other equivalent or more stringent validation or certification standards that are deemed acceptable by the Director.

(o) The dose monitoring approach used for UV facility must be reviewed and accepted by the Director. Typically the calculated dose approach is suitable for large systems or systems with significant flow variation, and the UV intensity setpoint approach is for small systems or systems with fixed flow rate. The dose monitoring approaches need to be consistent with the guidelines stated in the 2006 Final UVDGM.

(p) If Programmable Logic Controller (PLC) or SCADA interface is used for UV reactor's process control, the programming shall be in accordance with the validated dose monitoring algorithm and the validated conditions. The algorithm shall use inputs of flow, UV intensity sensor readings, lamps status, and/or UVT equal to or more conservative than values measured during the operation of the UV system. If the measured UVT is above the validated range, the maximum validated UVT shall be used as the input to the dose algorithm. If the measured flow rate is below the validated range, the minimum validated flow rate shall be used as the input to the dose algorithm. If the dose algorithm uses relative lamp output determined from the UV intensity sensor readings as an input, the relative lamp output shall be based on the measured UVT, even if it exceeds the maximum validated UVT.

(q) The UV reactor's PLC or microprocessor shall be programmed to record off specification events for the following conditions:

- (i) Delivered UV dose less than the required dose,
- (ii) Flow greater than the validated range,
- (iii) UVT less than the validated range,
- (iv) Lamp status outside the validated range,
- (v) Failure of UV sensors, flow meters, or on-line UVT monitors used in the dose calculation. Laboratory measurements of UVT may be used temporarily in the program until the on-line UVT monitor is repaired.

(4) Operation and Maintenance

The operation and maintenance tasks and the frequency of performing them can be specific to the UV equipment installed. The water systems with approved UV installations should follow the manufacturer's recommendation or the operation and maintenance guidelines stated in Section 6.2 through 6.5 of the 2006 Final UVDGM.

(a) Startup testing.

(i) The UV reactor manufacturer must provide a site-specific operation and maintenance manual, which shall include

the procedure for starting up and shutting down the UV treatment system.

(ii) Provide schedules and performance standards for start-up testing and initial operation. Schedules shall include anticipated start-up date and proposed testing duration. Performance standards shall reference applicable regulations and specific equipment capabilities.

(iii) Operators shall receive site-specific training on the operation of the UV disinfection system.

(b) An incident plan shall be developed to address lamp breakage and release of mercury, response to alarms, power supply interruptions, activation of standby equipment, failure of systems, etc.

(c) To verify that the UV reactors are operated within the validated limits, selected parameters shall be monitored. The routine operation and maintenance shall include the monitoring and calibration requirements listed in R309-215-15(19) and (20) and are in accordance with the monitoring and reporting protocol approved by the Director. For very small UV systems, the Director may consider granting exception to allow reduced monitoring and reporting on a case-by-case basis.

R309-520-9. Ozone.

(1) General Requirements.

(a) Ozone is approved as a primary disinfectant, but is not approved as a secondary disinfectant for the distribution system because of its rapid decomposition in aqueous solution. A different disinfectant approved for secondary disinfection must be used if a minimum disinfection residual is required in the distribution system. Ozone may also be used for taste and odor control, oxidation of inorganic and organic compounds and for enhanced performance of other water treatment processes such as microflocculation and filtration. Some of the requirements of this section may not be applicable if ozone is used only for reasons other than primary disinfection.

(b) Pilot studies or bench scale studies shall be conducted for all surface waters unless there is sufficient data available from other studies performed on the same water source. The studies shall determine the initial ozone demand, the rate of ozone decay, the minimum and maximum ozone dosages for the range of water conditions for disinfection "CT" compliance, and the ozone dosage required for other desired benefits. Pilot studies or bench scale studies shall take into account the seasonal and other variations of the source water. Plans for pilot studies or bench scale studies shall be reviewed and accepted by the Director prior to commencement of the studies.

(2) Ozone Generation.

(a) The ozone system should be designed with backup capability such that required inactivation can be achieved with one generator out of service.

(b) The ozone generators shall be housed in an enclosed temperature controlled building for protection. Adequate ventilation shall be provided in the building, and be capable of providing six or more air changes per hour when needed in case of an ozone leak.

(c) The ozone generators shall be of the medium or high frequency type.

(d) The power supply units for the ozone generators shall have a backup electrical power source, normally an emergency generator, or the system shall have an alternate primary disinfection system that may be used in case of an electrical power outage.

(e) The ozone generators shall be water-cooled with a maximum increase in cooling water temperature of 10 degrees F (5.6 degrees C). If necessary, the cooling water should be treated to minimize corrosion, scaling, and microbiological fouling of the water side of the tubes. A closed-loop cooling water system may be used to assure proper water conditions are maintained. The power supply units to the ozone generators

may also be water cooled.

(f) The ozone generators shall comply with Section 3705 of Chapter 37, "Ozone Gas Generators," of the 2006 International Fire Code.

(3) Ozone Generator Feed Gas.

(a) Feed gas may be air, vaporized high purity liquid oxygen, or oxygen enriched air. Oxygen may be generated on-site or delivered in bulk. Oxygen-enriched air is typically generated on-site.

(b) The design of the feed gas system must ensure that the maximum dew point of the feed gas of -76 degrees F (-60 degrees C) is not exceeded at any time.

(c) Liquid Oxygen Feed Gas Systems.

(i) Liquid oxygen storage tanks shall be sized to provide a minimum of a 7-day supply to the ozone generators at the maximum operating rate.

(ii) There shall be two or more vaporizers to convert liquid oxygen to the gaseous form. Vaporizers must be capable of maintaining oxygen flow at the minimum design air temperature with one unit on standby.

(iii) Liquid oxygen storage tanks and system shall comply with Chapters 40, "Oxidizers," of the 2006 International Fire Code.

(d) Air or Oxygen Enriched Air Feed Gas Systems.

(i) There shall be two or more air compressors to supply air. The capacity of the compressors shall be such that the demand during maximum ozone production and for other compressed air uses at the treatment plant can be met when the largest compressor is out of service.

(ii) Entrainment separators, refrigeration dryers, desiccant dryers, and filters shall be used as necessary to provide a sufficiently dried, dust-free, and oil-free feed gas to the ozone generators. Multiple units of this equipment shall be used so that the ozone generation is not interrupted in the event of a breakdown.

(4) Ozone Contactors.

(a) An ozone contactor shall consist of two or more chambers to provide for introduction of ozone into the water and contact time. In a water treatment plant, ozone may be introduced in the raw water, or ozone may be introduced later in the process, such as to settled water after solids have been removed. An ozone contactor must be a closed vessel that is kept under less than atmospheric pressure to prevent escape of ozone gas. The materials of construction must be ozone-resistant to prevent premature failure of the contactor.

(b) Ozone gas may be injected into the water under positive pressure through bubble diffusers using porous-tube or dome diffusers. Alternatively, ozone gas may be injected into the water using side stream injection. This is where ozone gas is drawn into the side stream using negative pressure, which is generated in a pipe section with a venturi.

(c) An ozone contactor shall be designed to achieve a minimum transfer efficiency of 85 percent.

(d) Multiple sampling points shall be provided in an ozone contactor to enable sampling of treated water for purposes of determining an accurate measure of the concentration to be used in the "CT" disinfection calculation.

(e) A recommended minimum disinfection contact time is ten minutes.

(f) Ozone contactors shall have provision for cleaning, maintenance, and drainage of the contactor. Each contactor chamber shall be equipped with an access hatchway or other means of entry.

(g) An ozone contactor shall have an emergency off-gas pressure/vacuum relief system to prevent damage to the unit.

(h) A system must be provided for worker safety at the end of the ozone contactor for compliance with OSHA standards. Specifically, ozone levels in the gas space above treated water that has exited the contactor must not exceed the

established OSHA 8-hour exposure limit of 0.1 ppm. This system may be an ozone residual quenching system where a chemical is used to destroy remaining ozone in the water, or this system may be a monitoring system that provides sufficient time to lower the residual ozone level in the water by natural decay to an acceptable level. Any chemical used to quench residual ozone shall comply with ANSI/NSF Standard 60.

(5) Off-Gas Destruction Units.

(a) A system for treating the final off-gas from each ozone contactor must be provided in order to meet safety standards. Systems using thermal destruction or catalytic destruction may be used. At least two units shall be provided which are each capable of handling the entire off-gas flow.

(b) Exhaust blowers shall be provided in order to draw off-gas from the contactor into the destruction units.

(c) Provisions must be made to drain water from condensation in the off-gas piping and to protect the destruction units and piping from moisture and other impurities that may cause damage.

(d) The maximum allowable ozone concentration in the gas discharge from a destruction unit is 0.1 ppm by volume. Provisions may be made for temporary transient concentration spikes that may exceed this limit.

(6) Piping and Connections.

(a) Because ozone is a strong oxidant, consideration shall be given to piping materials used in ozone service. Generally, only low carbon 304L and 316L stainless steel should be used for ozone gas service.

(b) Connections on piping used for ozone service should be welded where possible. Threaded connections should be avoided for ozone gas piping because of their tendency to leak. Connections with meters, valves, or other equipment should be made with flanged joints with ozone-resistant gaskets.

(c) A positive-closing 90-degree turn isolation valve, or other equivalent means, shall be provided in the piping between an ozone generator and a contactor to prevent moisture from reaching the ozone generator during shutdowns.

(7) Instrumentation and Monitoring.

(a) A flow meter shall be provided to measure the flow rate of the water being treated. A temperature gauge or transmitter shall also be provided to measure the temperature of the water being treated. The pH shall also be measured to indicate changes in the water being treated.

(b) An ozone gas analyzer, a flow meter, and a temperature measurement shall be provided on the gaseous ozone feed line going to the ozone injection point.

(c) Ozone aqueous residual analyzers shall be provided to measure the ozone residual concentration in the water being treated in order to determine "CT" credit.

(d) An ozone gas analyzer shall be provided on the gas discharge of each ozone destruction unit, or combined vent gas discharge, to determine the exiting ozone concentration.

(e) Ambient ozone monitors shall be installed in the vicinity of the ozone generators, the ozone contactors, the ozone destruction units, and other areas where ozone gas may accumulate.

(f) A continuous dew point monitor shall be provided on the feed gas line to the ozone generators.

(g) Instrumentation such as pressure gauges, temperature gauges, flow meters, and power meters shall be provided as necessary to monitor the feed gas system, ozone generators, power supply units, and cooling water to protect the equipment and monitor performance.

(8) Alarms and Shutdowns.

(a) An ambient ozone monitor shall be provided.

(b) The design shall include alarms and shutdowns.

(9) Safety.

(a) Training shall be provided to the operators of ozone systems by the manufacturers of the ozone equipment, or other

professionals with experience in ozone treatment, to promote the safe operation of the systems.

(b) Appropriate signs shall be installed around ozone and liquid oxygen equipment to warn operators, emergency responders, and others of the potential dangers.

(c) A means shall be provided, such as portable purge air blowers and portable monitors, to reduce residual ozone levels in an ozone contactor or other equipment to safe levels prior to entry for repair, maintenance, or emergency.

(10) Operation and Maintenance.

(a) An ambient ozone monitor should activate an alarm when the ozone level exceeds 0.1 ppm. Because the natural ozone levels can exceed 0.1 ppm under certain atmospheric conditions, it is permissible to set the alarm level at a slightly higher level to avoid nuisance alarms. Ozone generator shutdown shall occur when ambient levels exceed 0.3 ppm in the vicinity of an ozone generator or a contactor. Operators of the water treatment system may set the alarm level and the shutdown level lower at their discretion. It is required that an ozone ambient monitor activates a local audible alarm and/or flashing light warning, in addition to an alarm at the operator control system panel.

(b) There shall be an alarm/shutdown to prevent the dew point of the feed gas exceeding the maximum of -76 degrees F (-60 degrees C).

(c) Alarms and shutdowns shall be programmed based on the pressure gauges, temperature gauges, flow meters, and power meters, to protect the feed gas system, ozone generators, power supply units, and cooling water system.

R309-520-10. Chlorine Dioxide.

The public water systems must take into consideration that chlorine dioxide and its byproducts may have similar effects as chloramines and the impact on sensitive population. Chlorine dioxide should not be intentionally used as a secondary disinfectant. The water system must monitor the chlorine dioxide residuals and byproducts in the distribution system. If chlorine dioxide residual enters the distribution system and may result in impact on sensitive population, the public water system shall notify the public of the change and/or the schedule for the change, particularly notification to sensitive populations such as hospitals and kidney dialysis facilities serving dialysis patients and fisheries.

(1) Pre-design Proposal.

Proposals for the use of chlorine dioxide shall be discussed with the Division prior to the preparation of final plans and specifications. A water system must submit a detailed written proposal to the Director for review, including:

(a) The make, model, and specifications for proposed chlorine dioxide generator

(b) References of other U.S. potable water installations of the proposed unit

(c) Information on the operational and maintenance training program

(d) The expected total applied dosage of chlorine dioxide and other disinfectants as well as the points of application for all disinfectants and the type and amount of residuals and by-products expected in the distribution system

(2) Chlorine dioxide generators

(a) Chlorine dioxide generation should be designed to be efficient compared to industry standard, and production of excess chlorine shall be minimized.

(b) The generator shall not produce a solution with chlorine dioxide concentration more than 6,000 mg/L to minimize the explosion hazard.

(c) The design shall include capability to measure concentrations of chlorine dioxide, chlorite, chlorate, and free chlorine of the solution leaving the generator.

(d) The chlorine dioxide generator shall be equipped with

a chlorine dioxide analyzer to measure the strength of the solution leaving the generator.

(e) Generators which use solid chlorite will not be allowed.

(3) Chlorine Dioxide Feed and Storage System

(a) Chlorine Dioxide Feed system.

(i) Use fiberglass reinforced vinyl ester plastic (FRP) or high density linear polyethylene (HDLPE) tanks with no insulation.

(ii) If centrifugal pumps are used, provide Teflon packing material. Pump motors must be totally enclosed, fan-cooled, equipped with permanently sealed bearings, and equipped with double mechanical seals or other means to prevent leakage.

(iii) Provide chlorinated PVC, vinyl ester or Teflon piping material. Do not use carbon steel or stainless steel piping systems.

(iv) Provide glass view ports for the reactor if it is not made of transparent material.

(v) Provide flow monitoring on all chemical feed lines, dilution water lines, and chlorine dioxide solution lines.

(vi) Provide a means to verify calibrated feed flow to each application feed point.

(vii) Control air contact with chlorine dioxide solution to limit potential for explosive concentrations building up within the feed facility.

(viii) All chlorite solutions shall have concentrations less than 30%. Higher strength solutions are susceptible to crystallization and stratification.

(b) Chlorine Dioxide Storage and Operating Area. The following requirements apply to the chlorite storage and chlorine dioxide day tank area.

(i) The chlorine dioxide facility shall be physically located in a separate room from other water treatment plant operating areas.

(ii) The chlorine dioxide area shall have a ventilation system separate from other operating areas.

(iii) Provision shall be made to ventilate the chlorine dioxide facility area and maintain the ambient air chlorine dioxide concentrations below the Permissible Exposure Limit (PEL).

(A) The ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures.

(B) Air inlets are provided near the ceiling.

(C) Air inlets and outlets shall be louvered.

(D) Separate switches for the fans are outside and near the entrance of the facility.

(iv) The area housing chlorine dioxide facility shall be constructed of non-combustible materials such as concrete.

(v) There shall be an ambient air chlorine dioxide sensor in the vicinity of the chlorine dioxide operating area. The ambient air chlorine dioxide readouts and alarm or warning light shall be audible and visible in the operating area and on the outside of the door to the operating area. The design shall include distinguishing audible alarms that are triggered by the ambient air chlorine dioxide sensor readings.

(vi) There shall be observation windows through which the operating area can be observed from outside the room to ensure operator safety.

(vii) Manual switches to the light in the operating area shall be located outside the door to the room.

(viii) There shall be an emergency shower and eyewash outside and close to the door to the operating area.

(ix) An emergency shutoff control to shut flows to the generator shall be located outside the operating area.

(x) The design shall minimize the possibility of chlorite leaks.

(xi) The chlorite tank and chlorine dioxide solution tank

shall be vented to the outdoors away from any operating areas.

(xii) Gaseous chlorine feed to the chlorine dioxide generator shall enter the chlorine dioxide facility area through lines which can only feed to vacuum.

(xiii) The floor of the chlorine dioxide facility area shall slope to a sump.

(xiv) There shall not be any open drains in the chlorine dioxide operating area.

(xv) Provide secondary containments with sumps for chlorine dioxide storage, and chlorine dioxide solutions which can hold the entire volume of these vessels. This containment shall prevent these solutions from entering the rest of the operating area.

(xvi) Provide wash-down water within the operating area.

(xvii) The operating area shall be designed to avoid direct exposure to sunlight, UV light, or excessive heat.

(4) Other Design Criteria.

(a) Provide secondary containment, a sump, wash-down water, and a shower and eyewash at the bulk delivery transfer point.

(b) Finished water shall be used for chlorine dioxide generation.

(c) The finished water line to the chlorine dioxide generator shall be protected with a high hazard assembly.

(d) Provide a water supply near the storage and handling area for cleanup.

(e) The parts of the chlorine dioxide system in contact with the strong oxidizing or acid solutions shall be of inert material.

(f) The design shall provide the capability to shut off the chlorine dioxide operation remotely, i.e., from a location that is outside of the chlorine dioxide operating area.

(5) Operation and Maintenance.

(a) Do not store or handle combustible or reactive materials, such as acids, reduced metals, or organic material, in the chlorine dioxide operating area.

(b) Store chemicals in clean, closed, non-translucent containers.

(c) Personal protective equipment and first aid kits shall be stored at a nearby location that is outside the chlorine dioxide facility area.

(d) The temperature of the chlorine dioxide operating area shall be maintained between 60 and 100 degrees F.

(e) After delivery allow chlorite solutions to equalize with the ambient temperature of the operating area to avoid stratification.

(f) The Operating and Maintenance manual shall include operator safety and emergency response procedures. Personnel shall have ongoing training for operator safety and emergency response procedures.

(g) All wastes should be disposed of in accordance to any existing solid and hazardous waste regulations.

(h) The operating area should be inspected daily for chlorite spills and solid chlorite buildup. The daily inspections shall be logged.

(i) Chlorite leaks and solid chlorite buildup should be cleaned up and disposed of immediately.

(j) Solid chlorite should be washed down before removal.

(k) The ventilation system in the chlorine dioxide facility area shall be operated to maintain the ambient air chlorine dioxide concentrations below the Permissible Exposure Limit (PEL).

(l) Audible alarms shall be programmed to alert water treatment plant personnel when the ambient air chlorine dioxide sensor in the vicinity of the chlorine dioxide operating area detects the chlorine dioxide concentration above the Permissible Exposure Limit (PEL) and the Short Term Exposure Limit (STEL).

R309-520-11. Chloramines.

Proposals for the use of Chloramines as a disinfectant shall be discussed with the Division prior to the preparation of final plans and specifications.

KEY: drinking water, primary disinfectants, secondary disinfectants, operation and maintenance
August 28, 2013 **19-4-104**
Notice of Continuation March 22, 2010

R309. Environmental Quality, Drinking Water.
R309-525. Facility Design and Operation: Conventional Surface Water Treatment.

R309-525-1. Purpose.

This rule specifies requirements for conventional surface water treatment plants used in public water systems. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-525-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-525-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-525-4. General.

(1) Treatment plants used for the purification of surface water supplies or ground water supplies under direct influence of surface water must conform to the requirements given herein. The plants shall have, as a minimum, facilities for flash mixing of coagulant chemicals, flocculation, sedimentation, filtration and disinfection.

(2) The overall design of a water treatment facility must be carefully examined to assure the compatibility of all devices and processes. The design of treatment processes and devices shall depend on an evaluation of the nature and quality of the particular water to be treated. The combined unit processes shall produce water meeting all established drinking water standards as given in R309-200.

(3) Direct filtration may be acceptable and rules governing this method are given in R309-530-5.

(4) Refer to R309-530-9 for policy with regards to novel water treatment equipment or techniques which may depart from the requirements outlined herein.

R309-525-5. Plant Capacity and Number of Treatment Trains.

(1) A determination of the required plant capacity and the required number of treatment trains shall be made by the Director after consultation with the Division. Ordinarily, a minimum of two units each for flocculation, sedimentation and filtration must be provided. The design shall provide for parallel or series operation of the clarification stages. Flash mix shall be designed and operated to provide a minimum velocity gradient of 750 fps/ft. Mixing time shall be less than thirty seconds. The treatment plant shall be designed to meet the anticipated "peak day demand" of the system being served when the treatment plant is the system's sole source. When other sources are available to the system, this requirement may be relaxed.

(2) The degree of "back-up" required in a water treatment plant will vary with the number of connections to be served, the availability of other acceptable sources of water, and the ability to control water consumption. Thus, when other sources are available to the system, the requirements of R309-525-7 (Plant Reliability) may also be relaxed. The Division shall be consulted in this regard prior to plant design.

R309-525-6. Plant Siting.

Plants must be sited with due regard for earthquake, flood, and fire hazard. Assistance in this matter is available from the Utah Geologic Survey. The Division shall be consulted regarding site selection prior to the preparation of engineering plans and specifications.

R309-525-7. Plant Reliability.

Plants designed for processing surface water or ground water under direct influence of surface water shall be designed to meet present and future water demands and assure reliable operation at all times. To help assure proper, uninterrupted operation:

(1) A manual override shall be provided for any automatic controls. Highly sophisticated automation may put proper maintenance beyond the capability of the plant operator, leading to equipment breakdowns or expensive servicing. Adequate funding must be assured for maintenance of automatic equipment.

(2) Main switch electrical controls shall be located above grade, in areas not subject to flooding.

(3) Plants shall be operated by qualified personnel approved by the Director. As a minimum, the treatment plant manager is required to be certified in accordance with R309-300 at the grade of the waterworks system with an appropriate unrestricted Utah Operator's Certificate.

(4) The plant shall be constructed to permit units to be taken out of service without disrupting operation, and with drains or pumps sized to allow dewatering in a reasonable period of time.

(5) The plant shall have standby power available to permit operation of essential functions during power outages.

(6) The plant shall be provided with backup equipment or necessary spare parts for all critical items.

(7) Individual components critical to the operation of a treatment plant shall be provided with anchorage to secure the components from loss due to an earthquake event.

R309-525-8. Color Coding and Pipe Marking.

The piping in water treatment plants shall be color coded for identification. The following table contains color schemes recommended by the Division. Identification of the direction of flow and the contained liquid shall also be made on the pipe.

TABLE 525-1

Recommended Color Scheme for Piping	
Water Lines	
Raw	Olive Green
Settled or Clarified	Aquamarine
Finished	Dark Blue
Chemical Lines	
Alum	Orange
Ammonia	White
Carbon Slurry	Black
Chlorine (Gas and Solution)	Yellow
Fluoride	Light Blue with Red Band
Lime Slurry	Light Green
Potassium Permanganate	Violet
Sulfur Dioxide	Light Green with Yellow Band
Waste lines	
Backwash Waste	Light Brown
Sludge	Dark Brown
Sewer (Sanitary or Other)	Dark Gray
Other	
Compressed Air	Dark Green
Gas	Red
Other Lines	Light Gray

R309-525-9. Diversion Structures and Pretreatment.

Refer to R309-515-5(5) for diversion structure design.

R309-525-10. Presedimentation.

Waters containing, heavy grit, sand, gravel, leaves, debris, or a large volume of sediments may require pretreatment, usually sedimentation, with or without the addition of coagulation chemicals.

- (1) Presedimentation basins shall be equipped for efficient sludge removal.
- (2) Incoming water shall be dispersed across the full width of the line of travel as efficiently as practical. Short-circuiting shall be minimized.
- (3) Provisions for bypassing presedimentation basins shall be included.

R309-525-11. Chemical Addition.**(1) Standards.**

Chemicals used in the treatment of surface water shall achieve the following:

- (a) Primary coagulant chemicals shall be utilized to permit the formation of a floc,
- (b) Disinfectants shall be added to raw and/or treated water.

(2) Application Criteria.

In achieving these goals the chemical(s) shall be applied to the water:

- (a) To assure maximum control and flexibility of treatment,
- (b) To assure maximum safety to consumer and operators,
- (c) To prevent backflow or back-siphonage of chemical solutions to finished water systems.
- (d) With appropriate spacing of chemical feed to eliminate any interference between chemicals.

(3) Typical Chemical Doses.

Chemical doses shall be estimated for each treatment plant to be designed. "Jar tests" shall be conducted on representative raw water samples to determine anticipated doses.

(4) Information Required for Review.

With respect to chemical applications, a submittal for Division review and Director approval shall include:

- (a) Descriptions of feed equipment, including maximum and minimum feed rates,
- (b) Location of feeders, piping layout and points of application,
- (c) Chemical storage and handling facilities,
- (d) Specifications for chemicals to be used,
- (e) Operating and control procedures including proposed application rates,
- (f) Descriptions of testing equipment and procedures, and
- (g) Results of chemical, physical, biological and other tests performed as necessary to define the optimum chemical treatment.

(5) Quality of Chemicals.

All chemicals added to water being treated for use in a public water system for human consumption shall comply with ANSI/NSF Standard 60. Evidence for this requirement shall be met if the chemical shipping container labels or material safety data sheets include:

- (a) Chemical name, purity and concentrations, Supplier name and address, and
- (b) Labeling indicating compliance with ANSI/NSF Standard 60.

(6) Storage, Safe Handling and Ventilation of Chemicals.

All requirements of the Utah Occupational Safety and Health Act (UOSHA) for storage, safe handling and ventilation of chemicals shall apply to public drinking water facilities. The designer shall incorporate all applicable UOSHA standards into the facility design, however, review of facility plans by the Director under this Rule shall be limited to the following requirements:

- (a) Storage of Chemicals.

- (i) Space shall be provided for:

- (A) An adequate supply of chemicals,
- (B) Convenient and efficient handling of chemicals,
- (C) Dry storage conditions.

- (ii) Storage tanks and pipelines for liquid chemicals shall be specific to the chemicals and not for alternates.

- (iii) Chemicals shall be stored in covered or unopened shipping containers, unless the chemical is transferred into a covered storage unit.

- (iv) Liquid chemical storage tanks must:

- (A) Have a liquid level indicator, and
- (B) Have an overflow and a receiving basin or drain capable of receiving accidental spills or overflows, and meeting all requirements of R309-525-23, and

- (C) Be equipped with an inverted "J" air vent.

- (v) Acids shall be kept in closed acid-resistant shipping containers or storage units.

- (b) Safe Handling.

- (i) Material Safety Data Sheets for all chemicals utilized shall be kept and maintained in prominent display and be easily accessed by operators.

- (ii) Provisions shall be made for disposing of empty bags, drums or barrels by an acceptable procedure which will minimize operator exposure to dusts.

- (iii) Provisions shall be made for measuring quantities of chemicals used to prepare feed solutions.

- (c) Dust Control and Ventilation.

Adequate provision shall be made for dust control and ventilation.

- (7) Feeder Design, Location and Control.

- (a) General Feeder Design.

General equipment design, location and control shall be such that:

- (i) feeders shall supply, at all times, the necessary amounts of chemicals at an accurately controlled rate, throughout the anticipated range of feed,

- (ii) chemical-contact materials and surfaces are resistant to the aggressiveness of the chemicals,

- (iii) corrosive chemicals are introduced in a manner to minimize potential for corrosion,

- (iv) chemicals that are incompatible are not fed, stored or handled together.

- (v) all chemicals are conducted from the feeder to the point of application in separate conduits,

- (vi) spare parts are available for all feeders to replace parts which are subject to wear and damage,

- (vii) chemical feeders are as near as practical to the feed point,

- (viii) chemical feeders and pumps operate at no lower than 20 percent of the feed range,

- (ix) chemicals are fed by gravity where practical,

- (x) be readily accessible for servicing, repair, and observation.

- (b) Chemical Feed Equipment.

Where chemical feed is necessary for the protection of the consumer, such as disinfection, coagulation or other essential processes:

- (i) a minimum of two feeders, one active and one standby, shall be provided for each chemical,

- (ii) the standby unit or a combination of units of sufficient capacity shall be available to replace the largest unit during shut-downs,

- (iii) where a booster pump is required, duplicate equipment shall be provided and, when necessary, standby power,

- (iv) a separate feeder shall be used for each non-compatible chemical applied where a feed pump is required, and

- (v) spare parts shall be available for all feeders to replace

parts which are subject to wear and damage.

(c) Dry Chemical Feeders.

Dry chemical feeders shall:

(i) measure feed rate of chemicals volumetrically or gravimetrically, and

(ii) provide adequate solution water and agitation of the chemical in the solution tank.

(d) Feed Rate Control.

(i) Feeders may be manually or automatically controlled, with automatic controls being designed to allow override by manual controls.

(ii) Chemical feed rates shall be proportional to flows.

(iii) A means to measure water flow rate shall be provided.

(iv) Provisions shall be made for measuring the quantities of chemicals used.

(v) Weighing scales:

(A) shall be provided for weighing cylinders at all plants using chlorine gas,

(B) may be required for fluoride solution feed, where applicable,

(C) shall be provided for volumetric dry chemical feeders, and

(D) shall be accurate to measure increments of 0.5 percent of scale capacity.

(8) Feeder Appurtenances.

(a) Liquid Chemical Solution Pumps.

Positive displacement type solution feed pumps shall be used to feed liquid chemicals, but shall not be used to feed chemical slurries. Pumps must be sized to match or exceed maximum head conditions found at the point of injection. All liquid chemical feeders shall be provided with devices approved by the Utah Plumbing Code which will prevent the siphoning of liquid chemical through the pump.

(b) Solution Tanks.

(i) A means consistent with the nature of the chemical solution shall be provided in a solution tank to maintain a uniform strength of solution. Continuous agitation shall be provided to maintain slurries in suspension.

(ii) Means shall be provided to measure the solution level in the tank.

(iii) Chemical solutions shall be kept covered. Large tanks with access openings shall have the openings curbed and fitted with tight overhanging covers.

(iv) Subsurface locations are discouraged, but when used for solution tanks shall:

(A) be free from sources of possible contamination, and

(B) assure positive drainage for ground waters, accumulated water, chemical spills and overflows.

(v) Overflow pipes, when provided, shall:

(A) have a free fall discharge, and

(B) be located where noticeable.

(vi) Acid storage tanks shall be vented to the outside atmosphere, but not through vents in common with day tanks.

(vii) Each tank shall be provided with a valved drain, protected against backflow in accordance with R309-525-11(10)(b) and R309-525-11(10)(c).

(viii) Solution tanks shall be located and protective curbing provided so that chemicals from equipment failure, spillage or accidental drainage shall not enter the water in conduits, treatment or storage basins.

(ix) When polymers are used, storage tanks shall be located away from heat sources and direct sunlight.

(c) Day Tanks.

(i) Day tanks shall be provided where dilution of liquid chemical is required prior to feeding.

(ii) Day tanks shall meet all the requirements of R309-525-11(9)(b).

(iii) Certain chemicals, such as polymers, become

unstable after hydration, therefore, day tanks shall hold no more than a thirty hour supply unless manufacturer's recommendations allow for longer periods.

(iv) Day tanks shall be scale-mounted, or have a calibrated gauge painted or mounted on the side if liquid levels cannot be observed in a gauge tube or through translucent sidewalls of the tank. In opaque tanks, a gauge rod extending above a referenced point at the top of the tank, attached to a float may be used. The ratio of the cross-sectional area of the tank to its height must be such that unit readings are meaningful in relation to the total amount of chemical fed during a day.

(v) Hand pumps may be provided for transfer from a carboy or drum. A top rack may be used to permit withdrawal into a bucket from a spigot. Where motor-driven transfer pumps are provided a liquid level limit switch and an overflow from the day tank, which will drain by gravity back into the bulk storage tank, must be provided, unless spill containment is provided for both bulk and day tanks.

(vi) A means which is consistent with the nature of the chemical solution shall be provided to maintain uniform strength of solution in a day tank. continuous agitation shall be provided to maintain chemical slurries in suspension.

(vii) Tanks shall be properly labeled to designate the chemical contained.

(d) Feed Lines.

(i) Feed lines shall be as short as possible in length of run, and be:

(A) of durable, corrosion resistant material,

(B) easily accessible throughout the entire length,

(C) protected against freezing, and

(D) readily cleanable.

(ii) Feed lines shall slope upward from the chemical source to the feeder when conveying gases.

(iii) Lines shall be designed with due consideration of scale forming or solids depositing properties of the water, chemical, solution or mixture conveyed.

(9) Make up Water Supply and Protection.

(a) In Plant Water Supply.

In plant water supply shall be:

(i) Ample in supply, adequate in pressure, and of a quality equal to or better than the water at the point of application.

(ii) Provided with means for measurement when preparing specific solution concentrations by dilution.

(iii) Properly protected against backflow.

(b) Cross-Connection Control.

Cross-connection control shall be provided to assure that:

(i) The make-up waterlines discharging to solution tanks shall be properly protected from backflow as required by the Utah Plumbing Code.

(ii) Liquid chemical solutions cannot be siphoned through solution feeders into the process units as required in R309-525-11(9)(c).

(iii) No direct connection exists between any sewer and the drain or overflow from the feeder, solution chamber or tank by providing that all pipes terminate at least six inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit or waste receptacle.

(iv) Pre- and post-chlorination systems must be independent to prevent possible siphoning of partially treated water into the clear well. The water supply to each eductor shall have a separate shut-off valve. No master shut off valve will be allowed.

(c) Liquid Chemical Feeders, Siphon Control.

Liquid chemical feeders shall be such that chemical solutions cannot be siphoned into the process units, by:

(i) Assuring positive pressure at the point of discharge,

(ii) Providing vacuum relief,

(iii) Providing a suitable air gap, or

(iv) Other suitable means or combinations as necessary.

(10) Operator Safety.

Design of the plant shall be in accordance with the Utah Occupational Safety and Health Act (UOSHA). The designer and public water system management are responsible to see that they incorporate applicable UOSHA standards into the facility design and operation. Review of facility plans by the Division shall be limited to the following requirements:

(a) Floor surfaces shall be smooth and impervious, slip-proof and well drained.

(b) At least one pair of rubber gloves, a dust respirator of a type certified by the National Institute of Occupational Safety and Health (NIOSH) for toxic dusts, an apron or other protective clothing and goggles or face mask should be provided for each operator. A deluge shower and/or eye washing device shall be installed where strong acids and alkalis are used or stored.

(c) A water holding tank that will allow water to reach room temperature should be installed in the water line feeding the deluge shower and eye washing device. Other methods of water tempering may be available.

(d) Adequate ventilation should be provided.

(11) Design for Specific Chemicals.

Design of the plant shall be in accordance with the Utah Occupational Safety and Health Act (UOSHA). The designer and public water system management are responsible to see that they incorporate applicable UOSHA standards into the facility design and operation. Review of facility plans by the Division shall be limited to the following requirements:

Acids and Caustics.

(i) Acids and caustics shall be kept in closed corrosion-resistant shipping containers or storage units.

(ii) Acids and caustics shall not be handled in open vessels, but shall be pumped in undiluted form from original containers through suitable hose, to the point of treatment or to a covered day tank.

Sodium Chlorite for Chlorine Dioxide Generation.

Proposals for the storage and use of sodium chlorite should be approved by the Director prior to the preparation of final plans and specifications. Provisions shall be made for proper storage and handling of sodium chlorite to eliminate any danger of explosion.

(i) Sodium Chlorite Storage: (A) Sodium chlorite shall be stored by itself in a separate room and preferably should be stored in an outside building detached from the water treatment facility. It shall be stored away from organic materials which would react violently with sodium chlorite; (B) The storage structures shall be constructed of noncombustible materials; (C) If the storage structure is to be located in a area where a fire may occur, water shall be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions.

(ii) Sodium Chlorite Handling: (A) Care should be taken to prevent spillage; (B) An emergency plan of operation shall be available for the clean up of any spillage; (C) Storage drums should be thoroughly flushed prior to recycling or disposal.

(iii) Sodium Chlorite Feeders: (A) Positive displacement feeders should be provided; (B) Tubing for conveying sodium chlorite or chlorine dioxide solutions shall be Type 1 PVC, polyethylene or materials recommended by the manufacturer; (C) Feed lines shall be installed in a manner to prevent formation of gas pockets and shall terminate at a point of positive pressure; (D) Check valves shall be provided to prevent the backflow of chlorine into the sodium chlorite line.

R309-525-12. Mixing.**(1) Flash Mix.**

(a) Equipment - Mechanical, in-line or jet mixing devices shall be used.

(b) Mixing - All devices used in rapid mixing shall be

capable of imparting a minimum velocity gradient (G) of at least 750 fps per foot. Mixing time shall be less than thirty seconds.

(c) Location - The flash mix and flocculation basins shall be as close together as possible.

(d) Introduction of chemicals - Primary coagulant chemicals shall be added at the point of maximum turbulence within the flash mix unit. Where in-line mixing devices are used chemical injection shall be at the most appropriate upstream point.

(2) Flocculation.**(a) Basin design.**

Inlet and outlet design shall prevent short-circuiting and destruction of floc. A drain or pumps shall be provided to handle dewatering and sludge removal.

(b) Detention.

The flow-through velocity shall not be less than 0.5 feet per minute nor greater than 1.5 feet per minute with a detention time for floc formation of at least 30 minutes.

(c) Equipment.

Agitators shall be driven by variable speed drives with the peripheral speed of paddles ranging from 0.5 fps to 2.0 fps. Equipment shall be capable of imparting a velocity gradient (G) between 25 fps per foot and 80 fps per foot to the water treated. Compartmentalized tapered energy flocculation concept may also be used in which G tapers from 100 fps to 10 fps per foot.

(d) Hydraulic flocculation.

Hydraulic flocculation may be permitted and shall be reviewed on a case by case basis. The unit must yield a G value equivalent to that required by b and c above.

(e) Piping.

Flocculation and sedimentation basins shall be as close as possible. The velocity of flocculated water through pipes or conduits to settling basins shall not be less than 0.5 fps nor greater than 1.5 fps. Allowance must be made to minimize turbulence at bends and changes in direction.

(f) Other designs.

Baffling may be used to provide for flocculation in small plants only after approval by the Director. The design shall be such that the velocities and flows noted above will be maintained.

(g) Visible floc.

The flocculation unit shall be capable of producing a visible, settleable floc.

R309-525-13. Sedimentation.**(1) General Design Requirements.**

Sedimentation shall follow flocculation. The detention time for effective clarification is dependent upon a number of factors related to basin design and the nature of the raw water. The following criteria apply to conventional sedimentation units:

(a) Inlet devices.

Inlets shall be designed to distribute the water equally and at uniform velocities. Open ports, submerged ports, or similar entrance arrangements are required. A baffle shall be constructed across the basin close to the inlet end and shall project several feet below the water surface to dissipate inlet velocities and provide uniform flows across the basin.

(b) Outlet devices.

Outlet devices shall be designed to maintain velocities suitable for settling in the basin and to minimize short-circuiting. The use of submerged orifices is recommended in order to provide a volume above the orifices for storage when there are fluctuations in the flow.

(c) Emergency Overflow.

An overflow weir (or pipe) shall be installed which will establish the maximum water level desired on top of the filters. It shall discharge by gravity with a free fall to a location where the discharge will be visible.

(d) Sludge Removal.

Sludge removal design shall provide that:

(i) sludge pipes shall be not less than three inches in diameter and arranged to facilitate cleaning,

(ii) entrance to sludge withdrawal piping shall prevent clogging,

(iii) valves shall be located outside the basin for accessibility, and

(iv) the operator may observe and sample sludge being withdrawn from the unit.

(v) Sludge collection shall be accomplished by mechanical means.

(e) Drainage.

Basins shall be provided with a means for dewatering. Basin bottoms shall slope toward the drain not less than one foot in 12 feet where mechanical sludge collection equipment is not provided.

(f) Flushing lines.

Flushing lines or hydrants shall be provided and shall be equipped with backflow prevention devices acceptable to the Director.

(g) Safety.

Appropriate safety devices shall be included as required by the Occupational Safety and Health Act (OSHA).

(h) Removal of floating material.

Provision shall be made for the periodic removal of floating material.

(2) Sedimentation Without Tube Settlers.

If tube settling equipment is not used within settling basins, the following requirements apply:

(a) Detention Time.

A minimum of four hours of detention time shall be provided. Reduced sedimentation time may be approved when equivalent effective settling is demonstrated or multimedia filtration is employed.

(b) Weir Loading.

The rate of flow over the outlet weir shall not exceed 20,000 gallons per day per foot of weir length. Where submerged orifices are used as an alternate for overflow weirs they shall not be lower than three feet below the water surface when the flow rates are equivalent to weir loading.

(c) Velocity.

The velocity through settling basins shall not exceed 0.5 feet per minute. The basins shall be designed to minimize short-circuiting. Fixed or adjustable baffles shall be provided as necessary to achieve the maximum potential for clarification.

(d) Depth.

The depth of the sedimentation basin shall be designed for optimum removal.

(3) Sedimentation With Tube Settlers.

Proposals for settler unit clarification shall be approved by the Director prior to the preparation of final plans and specifications.

(a) Inlet and outlet design shall be such to maintain velocities suitable for settling in the basin and to minimize short circuiting.

(b) Flushing lines shall be provided to facilitate maintenance and be properly protected against backflow or back siphonage. Drain and sludge piping from the settler units shall be sized to facilitate a quick flush of the settler units and to prevent flooding other portions of the plant.

(c) Although most units will be located within a plant, design of outdoor installations shall provide sufficient freeboard above the top of settlers to prevent freezing in the units.

(d) The design application rate shall be a maximum rate of 2 gal/sq.ft./min of cross-sectional area (based on 24-inch long 60 degree tubes or 39.5-inch long 7.5 degree tubes), unless higher rates are successfully shown through pilot plant or in-plant demonstration studies.

R309-525-14. Solids Contact Units.

(1) General.

Solids contact units are generally acceptable for combined softening and clarification where water characteristics, especially temperature, do not fluctuate rapidly, flow rates are uniform and operation is continuous. Before such units are considered as clarifiers without softening, specific approval of the Director shall be obtained. A minimum of two units are required for surface water treatment.

(2) Installation of Equipment

The design engineer shall see that a representative of the manufacturer is present at the time of initial start-up operation to assure that the units are operating properly.

(3) Operation of Equipment.

The following shall be provided for plant operation:

(a) a complete outfit of tools and accessories,

(b) necessary laboratory equipment, and

(c) adequate piping with suitable sampling taps so located as to permit the collection of samples of water from critical portions of the units.

(4) Chemical feed.

Chemicals shall be applied at such points and by such means as to insure satisfactory mixing of the chemicals with the water.

(5) Mixing.

A flash mix device or chamber ahead of solids contact units may be required to assure proper mixing of the chemicals applied. Mixing devices employed shall be so constructed as to:

(a) provide good mixing of the raw water with previously formed sludge particles, and

(b) prevent deposition of solids in the mixing zone.

(6) Flocculation.

Flocculation equipment:

(a) shall be adjustable (speed and/or pitch),

(b) shall provide for coagulation in a separate chamber or baffled zone within the unit, and

(c) shall provide the flocculation and mixing period to be not less than 30 minutes.

(7) Sludge concentrators.

(a) The equipment shall provide either internal or external concentrators in order to obtain a concentrated sludge with a minimum of waste water.

(b) Large basins shall have at least two sumps for collecting sludge with one sump located in the central flocculation zone.

(8) Sludge removal.

Sludge removal design shall provide that:

(a) sludge pipes shall be not less than three inches in diameter and so arranged as to facilitate cleaning,

(b) the entrance to the sludge withdrawal piping shall prevent clogging,

(c) valves shall be located outside the tank for accessibility, and

(d) the operator may observe and sample sludge being withdrawn from the unit.

(9) Cross-connections.

(a) Blow-off outlets and drains shall terminate and discharge at places satisfactory to the Director.

(b) Cross-connection control must be included for the finished drinking water lines used to back flush the sludge lines.

(10) Detention period.

The detention time shall be established on the basis of the raw water characteristics and other local conditions that affect the operation of the unit. Based on design flow rates, the detention time shall be:

(a) two to four hours for suspended solids contact clarifiers and softeners treating surface water, and

(b) one to two hours for suspended solids contact softeners treating only ground water.

(11) Suspended slurry concentrate.

Softening units shall be designed so that continuous slurry concentrates of one percent or more, by weight, can be satisfactorily maintained.

(12) Water losses.

(a) Units shall be provided with suitable controls for sludge withdrawal.

(b) Total water losses shall not exceed:

(i) five percent for clarifiers,

(ii) three percent for softening units.

(c) Solids concentration of sludge bled to waste shall be:

(i) three percent by weight for clarifiers,

(ii) five percent by weight for softeners.

(13) Weirs or orifices.

The units shall be equipped with either overflow weirs or orifices constructed so that water at the surface of the unit does not travel over 10 feet horizontally to the collection trough.

(a) Weirs shall be adjustable, and at least equivalent in length to the perimeter of the basin.

(b) Weir loading shall not exceed:

(i) 10 gpm per foot of weir length for units used for clarifiers

(ii) 20 gpm per foot of weir length for units used for softeners.

(c) Where orifices are used the loading rates per foot of launderer shall be equivalent to weir loadings. Either shall produce uniform rising rates over the entire area of the tank.

(14) Upflow rates.

Upflow rates shall not exceed:

(a) 1.0 gpm/sf at the sludge separation line for units used for clarifiers,

(b) 1.75 gpm/sf at the slurry separation line for units used as softeners.

R309-525-15. Filtration.

(1) General.

Filters may be composed of one or more media layers. Mono-media filters are relatively uniform throughout their depth. Dual or multi-layer beds of filter material are so designed that water being filtered first encounters coarse material, and progressively finer material as it travels through the bed.

(2) Rate of Filtration.

(a) The rate of filtration shall be determined through consideration of such factors as raw water quality, degree of pretreatment provided, filter media, water quality control parameters, competency of operating personnel, and other factors as determined by the Director. Generally, higher filter rates can be assigned for the dual or multi-media filter than for a single media filter because the former is more resistant to filter breakthrough.

(b) The filter rate shall be proposed and justified by the designing engineer to the satisfaction of the Director prior to the preparation of final plans and specifications.

(c) The use of dual or multi-media filters may allow a reduction of sedimentation detention time (see R309-525-13(2)(a)) due to their increased ability to store sludge.

(d) Filter rates assigned by the Director must never be exceeded, even during backwash periods.

(e) The use of filter types other than conventional rapid sand gravity filters must receive written approval from the Director prior to the preparation of final plans and specifications.

(3) Number of Filters Required.

At least two filter units shall be provided. Where only two filter units are provided, each shall be capable of meeting the plant design capacity (normally the projected peak day demand) at the approved filtration rate. Where more than two filter units are provided, filters shall be capable of meeting the plant design

capacity at the approved filtration rate with one filter removed from service. Refer to R309-525-5 for situations where these requirements may be relaxed.

(4) Media Design.

R309-525-15(4)(a) through R309-525-15(4)(e), which follow, give requirements for filter media design. These requirements are considered minimum and may be made more stringent if deemed appropriate by the Director.

(a) Mono-media, Rapid Rate Gravity Filters.

The allowable maximum filtration rate for a silica sand, mono-media filter is three gpm/sf. This type of filter is composed of clean silica sand having an effective size of 0.35 mm to 0.65 mm and having a uniformity coefficient less than 1.7. The total bed thickness must not be less than 24 inches nor generally more than 30 inches.

(b) Dual Media, Rapid Rate Gravity Filters.

The following applies to all dual media filters:

(i) Total depth of filter bed shall not be less than 24 inches nor generally more than 30 inches.

(ii) All materials used to make up the filter bed shall be of such particle size and density that they will be effectively washed at backwash rates between 15 and 20 gpm/sf. They must settle to reconstitute the bed essentially in the original layers upon completion of backwashing.

(iii) The bottom layer must be at least ten inches thick and consist of a material having an effective size no greater than 0.45 mm and a uniformity coefficient not greater than 1.5.

(iv) The top layer shall consist of clean crushed anthracite coal having an effective size of 0.45 mm to 1.2 mm, and a uniformity coefficient not greater than 1.5.

(v) Dual media filters will be assigned a filter rate up to six gpm/sf. Generally if the bottom fine layer consists of a material having an effective size of 0.35 mm or less, a filtration rate of six gpm/sf can be assigned.

(vi) Each dual media filter must be provided with equipment which shall continuously monitor turbidity in the filtered water. The equipment shall be so designed to initiate automatic backwash if the filter effluent turbidity exceeds 0.3 NTU. If the filter turbidity exceeds one NTU, filter shutdown is required. In plants attended part-time, this shutdown must be accomplished automatically and shall be accompanied by an alarm. In plants having full-time operators, a one NTU condition need only activate an alarm. Filter shutdown may then be accomplished by the operator.

(c) Tri-Media, Rapid Rate Gravity Filters.

The following applies to all Tri-media filters:

(i) Total depth of filter bed shall not be less than 24 inches nor generally more than 30 inches.

(ii) All materials used to make up the filter bed shall be of such particle size and density that they will be effectively washed at backwash rates between 15 and 20 gpm/sf. They must settle to reconstitute the bed to the normal gradation of coarse to fine in the direction of flow upon completion of backwashing.

(iii) The bottom layer must be at least four inches thick and consist of a material having an effective size no greater than 0.45 mm and uniformity coefficient not greater than 2.2. The bottom layer thickness may be reduced to three inches if it consists of a material having an effective size no greater than 0.25 mm and a uniformity coefficient not greater than 2.2.

(iv) The middle layer must consist of silica sand having an effective size of 0.35 mm to 0.8 mm, and a uniformity coefficient not greater than 1.8.

(v) The top layer shall consist of clean crushed anthracite coal having an effective size of 0.45 mm to 1.2 mm, and a uniformity coefficient not greater than 1.85.

(vi) Tri-media filters will be assigned a filter rate up to 6 gpm/sf. Generally, if the bottom fine layer consists of a material having an effective size of 0.35 mm or less, a filtration rate of

six gpm/sf can be assigned.

(vii) Each Tri-media filter must be provided with equipment which shall continuously monitor turbidity in the filtered water. The equipment shall be so designed to initiate automatic backwash if the effluent turbidity exceeds 0.3 NTU. If the filter turbidity exceeds one NTU, filter shutdown is required. In plants attended part-time, this shutdown must be accomplished automatically and shall be accompanied by an alarm. In plants having full-time operators, a one NTU condition need only activate an alarm. Filter shutdown may then be accomplished by the operator.

(d) Granulated Activated Carbon (GAC).

Use of granular activated carbon media shall receive the prior approval of the Director, and must meet the basic specifications for filter material as given above, and:

(i) There shall be provision for adding a disinfectant to achieve a suitable residual in the water following the filters and prior to distribution,

(ii) There shall be a means for periodic treatment of filter material for control of biological or other growths,

(iii) Facilities for carbon regeneration or replacement must be provided.

(e) Other Media Compositions and Configurations.

Filters consisting of materials or configurations not prescribed in this section will be considered on experimental data or available operation experience.

(5) Support Media, Filter Bottoms and Strainer Systems.

Care must be taken to insure that filter media, support media, filter bottoms and strainer systems are compatible and will give satisfactory service at all times.

(a) Support Media.

The design of support media will vary with the configuration of the filtering media and the filter bottom. Thus, support media and/or proprietary filter bottoms shall be reviewed on a case-by-case basis.

(b) Filter Bottoms and Strainer Systems.

(i) The design of manifold type collection systems shall:

(A) Minimize loss of head in the manifold and laterals,

(B) Assure even distribution of washwater and even rate of filtration over the entire area of the filter,

(C) Provide a ratio of the area of the final openings of the strainer system to the area of the filter of about 0.003,

(D) Provide the total cross-sectional area of the laterals at about twice the total area of the final openings,

(E) Provide the cross-sectional area of the manifold at 1.5 to 2 times the total area of the laterals.

(ii) Departures from these standards may be acceptable for high rate filter and for proprietary bottoms.

(iii) Porous plate bottoms shall not be used where calcium carbonate, iron or manganese may clog them or with waters softened by lime.

(6) Structural Details and Hydraulics.

The filter structure shall be so designed as to provide for:

(a) Vertical walls within the filter,

(b) No protrusion of the filter walls into the filter media,

(c) Cover by superstructure,

(d) Head room to permit normal inspection and operation,

(e) Minimum water depth over the surface of the filter media of three feet, unless an exception is granted by the Director,

(f) Maximum water depth above the filter media shall not exceed 12 feet,

(g) Trapped effluent to prevent backflow of air to the bottom of the filters,

(h) Prevention of floor drainage to enter onto the filter by installation of a minimum four inch curb around the filters,

(i) Prevention of flooding by providing an overflow or other means of control,

(j) Maximum velocity of treated water in pipe and

conduits to filters of two fps,

(k) Cleanouts and straight alignment for influent pipes or conduits where solids loading is heavy or following lime-soda softening,

(l) Washwater drain capacity to carry maximum flow,

(m) Walkways around filters, to be not less than 24 inches wide,

(n) Safety handrails or walls around filter areas adjacent to normal walkways,

(o) No common wall between filtered and unfiltered water shall exist. This requirement may be waived by the Director for small "package" type plants using metal tanks of sufficient thickness,

(p) Filtration to waste for each filter.

(7) Backwash.

(a) Water Backwash Without Air.

Water backwash systems shall be designed so that backwash water is not recycled to the head of the treatment plant unless it has been settled, as a minimum. Furthermore, water backwash systems; including tanks, pumps and pipelines, shall:

(i) Provide a minimum backwash rate of 15 gpm/sf, consistent with water temperatures and the specific gravity of the filter media. The design shall provide for adequate backwash with minimum media loss. A reduced rate of 10 gpm/sf may be acceptable for full depth anthracite or granular activated carbon filters.

(ii) provide finished drinking water at the required rate by washwater tanks, a washwater pump, from the high service main, or a combination of these.

(iii) Permit the backwashing of any one filter for not less than 15 minutes.

(iv) Be capable of backwashing at least two filters, consecutively.

(v) Include a means of varying filter backwash rate and time.

(vi) Include a washwater regulator or valve on the main washwater line to obtain the desired rate of filter wash with washwater valves or the individual filters open wide.

(vii) Include a rate of flow indicator, preferably with a totalizer on the main washwater line, located so that it can be easily read by the operator during the washing process.

(viii) Be designed to prevent rapid changes in backwash water flow.

(ix) Use only finished drinking water.

(x) Have washwater pumps in duplicate unless an alternate means of obtaining washwater is available.

(xi) Perform in conjunction with "filter to waste" system to allow filter to stabilize before introduction into clearwell.

(b) Backwash with Air Scouring.

Air scouring can be considered in place of surface wash when:

(i) air flow for air scouring the filter must be 3 to 5 scfm/sf of filter area when the air is introduced in the underdrain; a lower air rate must be used when the air scour distribution system is placed above the underdrains,

(ii) a method for avoiding excessive loss of the filter media during backwashing must be provided,

(iii) air scouring must be followed by a fluidization wash sufficient to re-stratify the media,

(iv) air must be free from contamination,

(v) air scour distribution systems shall be placed below the media and supporting bed interface; if placed at the interface the air scour nozzles shall be designed to prevent media from clogging the nozzles or entering the air distribution system.

(vi) piping for the air distribution system shall not be flexible hose which will collapse when not under air pressure and shall not be a relatively soft material which may erode at the orifice opening with the passage of air at high velocity.

(vii) air delivery piping shall not pass down through the filter media nor shall there be any arrangement in the filter design which would allow short circuiting between the applied unfiltered water and the filtered water,

(viii) consideration shall be given to maintenance and replacement of air delivery piping,

(ix) when air scour is provided the backwash water rate shall be variable and shall not exceed eight gpm/sf unless operating experience shows that a higher rate is necessary to remove scoured particles from filter surfaces.

(x) the filter underdrains shall be designed to accommodate air scour piping when the piping is installed in the underdrain, and

(xi) the provisions of Section R309-525-15(7)(a) (Backwash) shall be followed.

(8) Surface Wash or Subsurface Wash.

Surface wash or subsurface wash facilities are required except for filters used exclusively for iron or manganese removal. Washing may be accomplished by a system of fixed nozzles or a revolving-type apparatus, provided:

(a) Provisions for water pressures of at least 45 psi,

(b) A properly installed vacuum breaker or other approved device to prevent back-siphonage if connected to a finished drinking water system,

(c) All washwater must be finished drinking water,

(d) Rate of flow of two gpm/sf of filter area with fixed nozzles or 0.5 gpm/sf with revolving arms.

(9) Washwater Troughs.

Washwater troughs shall be so designed to provide:

(a) The bottom elevation above the maximum level of expanded media during washing,

(b) A two inch freeboard at the maximum rate of wash,

(c) The top edge level and all edges of trough at the same elevation

(d) Spacing so that each trough serves the same number of square feet of filter areas,

(e) Maximum horizontal travel of suspended particles to reach the trough not to exceed three feet.

(10) Appurtenances.

(a) The following shall be provided for every filter:

(i) Sample taps or means to obtain samples from influent and effluent,

(ii) A gauge indicating loss of head,

(iii) A meter indicating rate-of-flow. A modified rate controller which limits the rate of filtration to a maximum rate may be used. However, equipment that simply maintains a constant water level on the filters is not acceptable, unless the rate of flow onto the filter is properly controlled,

(iv) A continuous turbidity monitoring device where the filter is to be loaded at a rate greater than three gpm/sf

(v) Provisions for draining the filter to waste with appropriate measures for backflow prevention (see R309-525-23).

(i) Wall sleeves providing access to the filter interior at several locations for sampling or pressure sensing,

(ii) A 1.0 inch to 1.5 inch diameter pressure hose and storage rack at the operating floor for washing filter walls.

(11) Miscellaneous.

Roof drains shall not discharge into filters or basins and conduits preceding the filters.

R309-525-16. In-Plant Finished Drinking Water Storage.

(1) General.

In addition to the following, the applicable design standards of R309-545 shall be followed for plant storage.

(a) Backwash Water Tanks.

Backwash water tanks shall be sized, in conjunction with available pump units and finished water storage, to provide the backwash water required by R309-525-15(7). Consideration

shall be given to the backwashing of several filters in rapid succession.

(b) Clearwell.

Clearwell storage shall be sized, in conjunction with distribution system storage, to relieve the filters from having to follow fluctuations in water use.

(i) When finished water storage is used to provide the contact time for chlorine (see R309-520-10(1)(f), especially sub-section (f)(iv)), special attention must be given to size and baffling.

(ii) To ensure adequate chlorine contact time, sizing of the clearwell shall include extra volume to accommodate depletion of storage during the nighttime for intermittently operated filtration plants with automatic high service pumping from the clearwell during non-treatment hours.

(iii) An overflow and vent shall be provided.

(2) Adjacent Compartments.

Finished drinking water shall not be stored or conveyed in a compartment adjacent to unsafe water when the two compartments are separated by a single wall. The Director may grant an exception to this requirement for small "package" treatment plants using metal tanks of sufficient wall thickness.

(3) Basins and Wet-Wells.

Receiving basins and pump wet-wells for finished drinking water shall be designed as drinking water storage structures. (See Section R309-545)

R309-525-17. Miscellaneous Plant Facilities.

(1) Laboratory.

Sufficient laboratory equipment shall be provided to assure proper operation and monitoring of the water plant. A list of required laboratory equipment is:

(a) one floc testing apparatus with illuminated base and variable speed stirrer,

(b) 10 each 1000 ml Griffin beakers (plastic is highly recommended over glass to prevent breakage),

(c) one 1000 ml graduated cylinder (plastic is highly recommended over glass to prevent breakage),

(d) pH test strips (6.0 to 8.5),

(e) five wide mouth 25 ml Mohr pipets,

(f) one triple beam, single pan or double pan balance with 0.1 g sensitivity and 2000 g capacity (using attachment weights),

(g) DPD chlorine test kit,

(h) bench-top turbidimeter,

(i) five each 1000 ml reagent bottles with caps,

(j) dish soap,

(k) brush (2 3/4 inch diameter by 5 inch),

(l) one platform scale 1/2 lb sensitivity, 100 lb capacity,

(m) book - Simplified Procedures for Water Examination, AWWA Manual M12

(2) Continuous Turbidity Monitoring and Recording Equipment.

Continuous turbidity monitoring and recording facilities shall be located as specified in R309-215-9.

(3) Sanitary and Other Conveniences.

All treatment plants shall be provided with finished drinking water, lavatory and toilet facilities unless such facilities are otherwise conveniently available. Plumbing must conform to the Utah Plumbing Code and must be so installed to prevent contamination of a public water supply.

R309-525-18. Sample Taps.

Sample taps shall be provided so that water samples can be obtained from appropriate locations in each unit operation of treatment. Taps shall be consistent with sampling needs and shall not be of the petcock type. Taps used for obtaining samples for bacteriological analysis shall be of the smooth-nosed type without interior or exterior threads, shall not be of

the mixing type, and shall not have a screen, aerator, or other such appurtenance.

R309-525-19. Operation and Maintenance Manuals.

Operation and maintenance manuals shall be prepared for the treatment plant and found to be acceptable by the Director. The manuals shall be usable and easily understood. They shall describe normal operating procedures, maintenance procedures and emergency procedures.

R309-525-20. Operator Instruction.

Provisions shall be made for operator instruction at the start-up of a plant.

R309-525-21. Safety.

All facilities shall be designed and constructed with due regard for safety, comfort and convenience. As a minimum, all applicable requirements of Utah Occupational Safety and Health Act (UOSHA) must be adhered to.

R309-525-22. Disinfection Prior To Use.

All pipes, tanks, and equipment which can convey or store finished drinking water shall be disinfected in accordance with the following AWWA procedures:

- (1) C651-05 Disinfecting Water Mains
- (2) C652-02 Disinfection of Water Storage Facilities
- (3) C653-03 Disinfection of Water Treatment Plants

R309-525-23. Disposal of Treatment Plant Waste.

Provisions must be made for proper disposal of water treatment plant waste such as sanitary, laboratory, sludge, and filter backwash water. All waste discharges and treatment facilities shall meet the requirements of the plumbing code, the Utah Department of Environmental Quality, the Utah Department of Health, and the United States Environmental Protection Agency, including the following:

- (1) Rules for Onsite Wastewater Disposal Systems, Utah Administrative Code R317-4.
- (2) Rules for Water Quality, Utah Administrative Code R317.
- (3) Rules for Solid and Hazardous Waste, Utah Administrative Code R315.

In locating waste disposal facilities, due consideration shall be given to preventing potential contamination of a water supply as well as breach or damage due to environmental factors.

R309-525-24. Other Considerations.

Consideration shall be given to the design requirements of other federal, state, and local regulatory agencies for items such as safety requirements, special designs for the handicapped, plumbing and electrical codes, construction in the flood plain, etc.

R309-525-25. Operation and Maintenance.

(1) Water system operators must determine that all chemicals added to water intended for human consumption are suitable for drinking water use and comply with ANSI/NSF Standard 60.

(2) No chemicals or other substances may be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Director. The Director shall be notified prior to the changing of primary coagulant type. The Director may require documentation to verify that sufficient testing and analysis have been done. The primary coagulant may not be changed without prior approval from the Director.

(3) During the operation of a conventional surface water treatment plant stable flow rates shall be maintained through the

filters.

(4) All instrumentation needed to verify that treatment processes are sufficient shall be properly calibrated and maintained. As a minimum, this shall include turbidimeters.

**KEY: drinking water, flocculation, sedimentation, filtration
July 1, 2013
Notice of Continuation March 22, 2010
19-4-104**

R309. Environmental Quality, Drinking Water.**R309-530. Facility Design and Operation: Alternative Surface Water Treatment Methods.****R309-530-1. Purpose.**

This rule specifies requirements for alternative surface water treatment methods. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-530-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-530-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-530-4. General.**(1) Alternative Methods.**

In addition to conventional surface water treatment method (i.e. coagulation, sedimentation and filtration as outlined in R309-525), several alternative methods may also be suitable. They are: Direct Filtration; Slow Sand Filtration; Membrane Filtration; and Diatomaceous Earth Filtration.

(2) Incorporation of Other Rules.

For each process described in this section pertinent rules are given. The designer shall also incorporate the relevant rules given in other sections into the plans and specifications for any of these specialized treatment methods. Where applicable, the following topics shall be addressed:

- (a) Plant Siting (see R309-525-6).
- (b) Pre-design Submittal (see R309-515-5(2)).
- (c) Plant Reliability (see R309-525-7).
- (d) Color Coding and Pipe Marking (see R309-525-8).
- (e) Chemical Addition (see R309-525-11).
- (f) Miscellaneous Plant Facilities (see R309-525-17, particularly sub-section R309-525-17(1), Laboratory).
- (g) Operation and Maintenance Manuals (see R309-525-19).
- (h) Safety (see R309-525-21).
- (i) Disposal of Treatment Plant Waste (see R309-525-23).
- (j) Disinfection (see R309-520).

R309-530-5. Direct Filtration.**(1) Chemical Addition and Mixing.**

Direct Filtration is conventional surface water treatment without the sedimentation process. Rules for Chemical Addition and Mixing shall be the same as found in sections R309-525-11 and R309-525-12.

(2) Source Water Quality.

Direct Filtration applies the destabilized colloids to the filter rather than removing the majority of the load through sedimentation. While this process represents considerable construction cost savings, the source water must have low average turbidity in order to provide reliable service without excessive backwash requirements. Source water with low average turbidity is generally only obtained from large capacity reservoirs.

(3) Design Requirements.

The following requirements shall apply to Direct Filtration plants:

(a) At least one year's record of source water turbidity, sampled at least once per week, shall be presented to the Director. A Direct Filtration facility will only be permitted if the data shows that 75% of the measurements are below five (5) NTU. The Director shall judge whether Direct Filtration is suitable given the quality of the proposed source water (see R309-515-5(2)(a)(ii)).

(b) Pilot plant studies, acceptable to the Director, shall be conducted prior to the preparation of final engineering plans.

(c) Requirements for flash mix and flocculation basin design are given in sub-sections R309-525-12(1) and R309-525-12(2).

(d) Chemical addition and mixing equipment shall be designed to be capable of providing a visible, but not necessarily settleable, floc.

(e) Surface wash, subsurface wash, or air scour shall be provided for the filters in accordance with sub-section R309-525-15(7).

(f) A continuous monitoring turbidimeter shall be installed on each filter effluent line and shall be of a type with at least two alarm conditions capable of meeting the requirements of subsections R309-525-15(4)(b)(vi) or R309-525-15(4)(c)(vii). The combined plant effluent shall be equipped with a continuous turbidimeter having a chart recorder. Additional monitoring equipment to assist in control of the coagulant dose may be required (i.e. streaming current gauges, particle counters, etc.) if the plant cannot consistently meet the requirements of rule R309-200.

(g) In addition to the alarm conditions required above, the plant shall be designed and operated so that the plant will automatically shut down when a source water turbidity of 20 NTU lasts longer than three hours, or when the source water turbidity exceeds 30 NTU at any time.

(h) The plant design and land ownership surrounding the plant shall allow for the installation of conventional sedimentation basins. Sedimentation basins may be required if the Director determines the plant is failing to meet minimum water quality or performance standards.

R309-530-6. Slow Sand Filtration.**(1) Acceptability.**

Slow sand filtration means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particle removal by physical and biological mechanisms. The acceptability of slow sand filters as a substitute for "conventional surface water treatment" facilities (detailed in R309-525) shall be determined by the Director based on suitability of the source water and demand characteristics of the system.

(2) Source Water Quality.

The Director may impose design requirements in addition to those listed herein, in allowing this process. The following shall be considered, among other factors, in determining whether slow sand filtration will be acceptable:

(a) Source water turbidity must be low and consistent. Slow Sand Filtration shall be utilized only when the source waters have turbidity less than 50 NTU and color less than 30 units (see R309-515-5(2)(a)).

(b) The nature of the turbidity particles shall be considered. Turbidity must not be attributable to colloidal clay.

(c) The nature and extent of algae growths in the raw water shall be considered. Algae must not be a species considered as filter and screen-clogging algae as indicated in "Standard Methods for the Examination of Water and Wastewater" prepared and published jointly by American Public Health Association, American Water Works Association, and Water Environment Federation. High concentrations of algae in the raw water can cause short filter runs; the amount of algae, expressed as the concentration of

chlorophyll "a" in the raw water shall not exceed 0.005 mg/l.

(3) Pilot Plant Studies.

The Director shall allow the use of Slow Sand Filtration only when the supplier's engineering studies show that the slow sand facility can consistently produce an effluent meeting the quality requirements of rule R309-200. The Director should be consulted prior to the detailed design of a slow sand facility.

(4) Operation.

Effluent from a Slow Sand Filtration facility shall not be introduced into a public water supply until an active biological mat has been created on the filter.

(5) Design requirements.

The following design parameters shall apply to each Slow Sand Filtration plant:

(a) At least three filter units shall be provided. Where only three units are provided, any two shall be capable of meeting the plant's design capacity (normally the projected "peak daily flow") at the approved filtration rate. Where more than three filter units are provided, the filters shall be capable of meeting the plant design capacity at the approved filtration rate with any one filter removed from service.

(b) All filters shall be protected to prevent freezing. If covered by a structure, enough headroom shall exist to permit normal movement by operating personnel for scraping and sand removal operations. There shall be adequate manholes and access ports for the handling of sand. An overflow at the maximum filter water level shall be provided.

(c) The permissible rates of filtration shall be determined by the quality of the source water and shall be determined by experimental data derived during pilot studies conducted on the source water. Filtration rates of 0.03 gpm/sf to 0.1 gpm/sf shall be acceptable (equivalent to two to six million gallons per day per acre). Somewhat higher rates may be acceptable when demonstrated to the satisfaction of the Director.

(d) Each filter unit shall be equipped with a main drain and an adequate number of lateral underdrains to collect the filtered water. The underdrains shall be so spaced that the maximum velocity of the water flow in the underdrain will not exceed 0.75 fps. The maximum spacing of the laterals shall not exceed three feet if pipe laterals are used.

(e) Filter sand shall be placed on graded gravel layers for an initial filter sand depth of 30 inches. A minimum of 24 inches of filter sand shall be present, even after scraping. The effective size of the filter sand shall be between 0.30 mm and 0.45 mm in diameter. The filter sand uniformity coefficient shall not exceed 2.5. Further, the sand shall thoroughly washed and found to be clean and free from foreign matter.

(f) A three-inch layer of well rounded sand shall be used as a supporting media for filter sand. It shall have an effective size of 0.8 mm to 2.0 mm in diameter and the uniformity coefficient shall not be greater than 1.7.

(g) A supporting gravel media shall be provided. It shall consist of hard, durable, rounded silica particles and shall not include flat or elongated particles. The coarsest gravel shall be 2.5 inches in size when the gravel rests directly on the strainer system, and must extend above the top of the perforated laterals. Not less than four layers of gravel shall be provided in accordance with the following size and depth distribution when used with perforated laterals:

TABLE 530-1

Size	Depth
2 1/2 to 1 1/2 inches	5 to 8 inches
1 1/2 to 3/4 inches	3 to 5 inches
3/4 to 1/2 inches	3 to 5 inches
1/2 to 3/16 inches	2 to 3 inches
3/16 to 3/32 inches	2 to 3 inches

Reduction of gravel depths may be considered upon justification to the Director when proprietary filter bottoms are

specified.

(h) Slow sand filters shall be designed to provide a depth of at least three to five feet of water over the sand.

(i) Each filter shall be equipped with: a loss of head gauge; an orifice, venturi meter, or other suitable metering device installed on each filter to control the rate of filtration; and an effluent pipe designed to maintain the water level above the top of the filter sand.

(j) Disinfection of the effluent of Slow Sand Filtration plants will be required.

(k) A filter-to-waste provision shall be included.

(l) Electrical power shall be available at the plant site.

R309-530-7. Diatomaceous Earth Filtration.

The use of Diatomaceous Earth Filtration units may be considered for application to surface waters with low turbidity and low bacterial contamination, and additionally may be used for iron removal for groundwaters of low quality, providing the removal is effective and the water is of sanitary quality before treatment.

The acceptability of Diatomaceous Earth Filtration as a substitute for "conventional surface water treatment" facilities (detailed in rule R309-525) shall be determined by the Director. Determination may be based on the level of support previously exhibited by the public water system management along with a finding by the Director that "conventional surface water treatment" or other methods herein described are too costly or unacceptable.

Diatomaceous Earth Filtration consists of a process to remove particles from water wherein a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the source water to maintain the permeability of the filter cake. Diatomite filters are characterized by rigorous operating requirements, high operating costs, and increased sludge production.

Part 4, Section 4.2.3, Diatomaceous Earth Filtration, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition is hereby incorporated by reference and compliance with those standards shall be required for the design and operation of diatomaceous earth filtration facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-530-8. Membrane Technology.

(1) Acceptability.

Surface waters, or groundwater under the direct influence of surface water (UDI), may be treated using membrane technology (microfiltration, ultrafiltration, nanofiltration) coupled with "primary and secondary disinfection."

(2) Pilot Plant Study.

Because this is a relatively new technology, appropriate investigation shall be conducted by the public water system to assure that the process will produce the required quality of water at a cost which can be borne by the public water system consumers. A pilot plant study shall be conducted prior to the commencement of design. The study must be conducted in accordance with EPA's Environmental Technology Verification Program (ETV) or the protocol and treated water parameters must be approved prior to conducting any testing by the Director.

(3) Design Requirements.

The following items shall be addressed in the design of any membrane technology plant intended to provide microbiological treatment of surface waters or groundwater "UDI:"

(a) The facility shall be equipped with an on-line particle counter on the final effluent.

(b) The facility shall be equipped with an automatic membrane integrity test system.

(4) The Director shall establish the turbidity limit for 95% of turbidity measurements and the maximum turbidity limit which shall not be exceeded. The plant effluent shall meet the requirements of R309-200-5(5)(a)(ii).

R309-530-9. New Treatment Processes or Equipment.

The policy of the Board is to encourage, rather than to obstruct, the development of new methods and equipment for the treatment of water. Nevertheless, any new processes or equipment must have been thoroughly tested in full-scale, comparable installations, before approval of plans can be issued. Refer to EPA's Environmental Technology Verification Program (ETV).

No new treatment process will be approved for use in Utah unless the designer or supplier can present evidence satisfactory to the Director that the process will insure the delivery of water of safe, sanitary quality, without imposing undue problems of supervision, operation and/or control.

The Director shall establish the turbidity limit for 95% of turbidity measurements and the maximum turbidity limit which shall not be exceeded. The plant effluent shall meet the requirements of R309-200-5(5)(a)(ii).

KEY: drinking water, direct filtration, slow sand filtration, membrane technology

August 28, 2013

19-4-104

Notice of Continuation March 22, 2010

R309. Environmental Quality, Drinking Water.**R309-535. Facility Design and Operation: Miscellaneous Treatment Methods.****R309-535-1. Purpose.**

The purpose of this rule is to provide specific requirements for miscellaneous water treatment methods which are primarily intended to remove chemical contaminants from drinking water; or, adjust the chemical composition of drinking water. It is intended to be applied in conjunction with other rules, specifically R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-535-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-535-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-535-4. General.

For each process described in this section pertinent rules are given. The designer must also, however, incorporate the relevant rules given in other sections into the plans and specifications for any of these specialized treatment methods. Where applicable, the following topics must be addressed:

- (1) Plant Siting (see R309-525-6).
- (2) Plant Reliability (see R309-525-7).
- (3) Color Coding and Pipe Marking (see R309-525-8).
- (4) Chemical Addition (see R309-525-11).
- (5) Miscellaneous Plant Facilities (see R309-525-17, particularly sub-section R309-525-17(1), Laboratory).
- (6) Operation and Maintenance Manuals (see R309-525-19).
- (7) Safety (see R309-525-21).
- (8) Disposal of Treatment Plant Waste (see R309-525-23).
- (9) Disinfection (see R309-520).

R309-535-5. Fluoridation.

Sodium fluoride, sodium silicofluoride and fluorosilicic acid shall conform to the applicable AWWA standards and/or ANSI/NSF Standard 60. Other fluoride compounds which may be available must be approved by the Director.

(1) Fluoride compound storage.

Fluoride chemicals shall be isolated from other chemicals to prevent contamination. Compounds shall be stored in covered or unopened shipping containers and shall be stored inside a building. Unsealed storage units for fluorosilicic acid shall be vented to the atmosphere at a point outside any building. Bags, fiber drums and steel drums shall be stored on pallets.

(2) Chemical feed equipment and methods.

In addition to the requirements in R309-525-11 "Chemical Addition", fluoride feed equipment shall meet the following requirements:

- (a) scales, loss-of-weight recorders or liquid level indicators, as appropriate, accurate to within five percent of the average daily change in reading shall be provided for chemical feeds,
- (b) feeders shall be accurate to within five percent of any desired feed rate,

(c) fluoride compound shall not be added before lime-soda softening or ion exchange softening,

(d) the point of application of fluorosilicic acid, if into a horizontal pipe, shall be in the lower half of the pipe,

(e) a fluoride solution shall be applied by a positive displacement pump having a stroke rate not less than 20 strokes per minute,

(f) a spring opposed diaphragm type anti-siphon device shall be provided for all fluoride feed lines and dilution water lines,

(g) a device to measure the flow of water to be treated is required,

(h) the dilution water pipe shall terminate at least two pipe diameters above the solution tank,

(i) water used for sodium fluoride dissolution shall be softened if hardness exceeds 75 mg/l as calcium carbonate,

(j) fluoride solutions shall be injected at a point of continuous positive pressure or a suitable air gap provided,

(k) the electrical outlet used for the fluoride feed pump shall have a nonstandard receptacle and shall be interconnected with the well or service pump,

(l) saturators shall be of the upflow type and be provided with a meter and backflow protection on the makeup water line.

(m) lead weights shall not be used in fluoride chemical solutions to keep pump suction lines at the bottom of a day or bulk storage tank.

(3) Secondary controls.

Secondary control systems for fluoride chemical feed devices shall be provided as a means of reducing the possibility for overfeed; these may include flow or pressure switches or other devices.

(4) Protective equipment.

Personal protective equipment as outlined in R309-525-11(10) shall be provided for operators handling fluoride compounds. Deluge showers and eye wash devices shall be provided at all fluorosilicic acid installations.

(5) Dust control.

Provision must be made for the transfer of dry fluoride compounds from shipping containers to storage bins or hoppers in such a way as to minimize the quantity of fluoride dust which may enter the room in which the equipment is installed. The enclosure shall be provided with an exhaust fan and dust filter which place the hopper under a negative pressure. Air exhausted from fluoride handling equipment shall discharge through a dust filter to the outside atmosphere of the building.

(b) Provision shall be made for disposing of empty bags, drums or barrels in a manner which will minimize exposure to fluoride dusts. A floor drain shall be provided to facilitate the hosing of floors.

(6) Testing equipment.

Equipment shall be provided for measuring the quantity of fluoride in the water. Such equipment shall be subject to the approval of the Director.

R309-535-6. Taste and Odor Control.

Part 4, Section 4.9, Taste and Odor Control, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition is hereby incorporated by reference and compliance with those standards shall be required for the design and operation of taste and odor control facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-535-7. Stabilization.

Part 4, Section 4.8, Stabilization, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition is hereby incorporated by reference

and compliance with those standards shall be required for the design and operation of stabilization facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-535-8. Deionization.

Current practical methods of deionization include Ion Exchange, Reverse Osmosis and Electrodialysis. Additional methods of deionization may be approved subject to the presentation of evidence of satisfactory reliability.

All properly developed groundwater sources having water quality exceeding 2,000 mg/l Total Dissolved Solids and/or 500 mg/l Sulfate shall be either properly diluted or treated by the methods outlined in this section. Deionization cannot be considered a substitute process for conventional complete treatment outlined in R309-525.

(1) Ion Exchange.

(a) General.

Great care shall be taken by the designer to avoid loading the media with water high in organics.

(b) Design.

(i) Pretreatment shall be provided per the manufacturer's recommendation.

(ii) Upflow or down flow units are acceptable.

(iii) Exchangers shall have at least a three foot media depth.

(iv) Exchangers shall be designed to meet the recommendations of the media manufacturer with regard to flow rate or contact time. In any case, flow shall not exceed seven gpm/sf of bed area. The plant shall be provided with an influent or effluent meter as well as a meter on any bypass line.

(v) Chemical feeders used shall conform with R309-525-8. All solution tanks shall be covered.

(vi) Regenerants added shall be uniformly distributed over the entire media surface of upflow or downflow units. Regeneration shall be according to the media manufacturer's recommendations.

(vii) The wash rate capability shall be in excess of the manufacturer's recommendation and should be at least six to eight gpm/sf of bed area.

(viii) Disinfection (see R309-520) shall be required ahead of the exchange units where this does not interfere with the media.

Where disinfection interferes with the media, disinfection shall follow the treatment process.

(c) Waste Disposal.

Waste generated by ion exchange treatment shall be disposed of in accordance with R309-525-23.

(2) Reverse Osmosis.

(a) General.

The design shall permit the easy exchange of modules for cleaning or replacement.

(b) Design Criteria.

(i) Pretreatment shall be provided per the manufacturer's recommendation.

(ii) Required equipment includes the following items: pressure gauges on the upstream and downstream side of the filter; a conductivity meter present at the site; taps for sampling permeate, concentrate and blended flows (if practiced). If a continuous conductivity meter is permanently installed, piping shall be such that the meter can be disconnected and calibrated with standard solutions at a frequency as recommended by the manufacturer.

(iii) Aeration, if practiced, shall conform with provisions of R309-535-9.

(iv) Cleaning shall be routinely done in accordance with the manufacturer's recommendations.

(v) Where the feed water pH is altered, stabilization of the

finished water is mandatory.

(c) Waste Disposal.

Waste generated by reverse osmosis treatment shall be disposed of in accordance with R309-525-23.

(3) Electrodialysis.

(a) General.

(b) Design.

(i) Pretreatment shall be provided per the manufacturers recommendation.

(ii) The design shall include ability to: measure plant flow rates; measure feed temperature if the water is heated (a high temperature automatic cutoff is required to prevent membrane damage); measure D.C voltage at the first and second stages as well as on each of the stacks. Sampling taps shall be provided to measure the conductivity of the feed water, blowdown water, and product water. D.C. and A.C. kilowatt-hour meters to record the electricity used shall also be provided.

(c) Waste Disposal.

Waste generated by electrodialysis treatment shall be disposed of in accordance with R309-525-23.

R309-535-9. Aeration.

Part 4, Section 4.5, Aeration, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition, is hereby incorporated by reference and compliance with those standards shall be required for the design and operation of aeration facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-535-10. Softening.

Part 4, Section 4.4, Softening, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition, is hereby incorporated by reference and compliance with those standards shall be required for the design and operation of softening facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-535-11. Iron and Manganese Control.

Iron and manganese control, as used herein, refers solely to treatment processes designed specifically for this purpose. The treatment process used will depend upon the character of the source water. The selection of one or more treatment processes shall meet specific local conditions as determined by engineering investigations, including chemical analyses of representative samples of water to be treated, and receive approval of the Director. It may be necessary to operate a pilot plant in order to gather all information pertinent to the design. Consideration should be given to adjust the pH of the raw water to increase the rate of the chemical reactions involved.

Removal or treatment of iron and manganese are normally by the following methods:

(1) Removal by Oxidation, Detention and Filtration.

(a) Oxidation.

Oxidation may be by aeration, or by chemical oxidation with chlorine, potassium permanganate, ozone or chlorine dioxide.

(b) Detention.

(i) Reaction time - A minimum detention time of twenty minutes shall be provided following aeration in order to insure that the oxidation reactions are as complete as possible. This minimum detention may be omitted only where a pilot plant study indicates no need for detention. The detention basin shall be designed as a holding tank with no provisions for sludge collection but with sufficient baffling to prevent short circuiting.

(ii) Sedimentation - Sedimentation basins shall be

provided when treating water with high iron and/or manganese content, or where chemical coagulation is used to reduce the load on the filters. Provisions for sludge removal shall be made.

(c) Filtration.

(i) General - Minimum criteria relative to number, rate of filtration, structural details and hydraulics, filter media, etc., provided for rapid rate gravity filters shall apply to pressure filters where appropriate, and may be used in this application but cannot be used in the filtration of surface waters or following lime-soda softening.

(ii) Details of Design for Pressure Filter - The filters shall be designed to provide for:

(A) Loss of head gauges on the inlet and outlet pipes of each filter,

(B) An easily readable meter or flow indicator on each battery of filters,

(C) Filtration and backwashing of each filter individually with an arrangement of piping as simple as possible to accomplish these purposes,

(D) The top of the washwater collectors to be at least twenty-four (24) inches above the surface of the media,

(E) The underdrain system to efficiently collect the filtered water and to uniformly distribute the backwash water at a rate capable of not less than 15 gpm/sf of filter area,

(F) Backwash flow indicators and controls that are easily readable while operating the control valves,

(G) An air release valve on the highest point of each filter,

(H) An accessible manhole to facilitate inspections and repairs,

(I) Means to observe the wastewater and filters during backwashing, and

(J) Construction to prevent cross-connection.

(2) Removal by the Lime-soda Softening Process.

For removal by the lime-soda softening process refer to Part 4, Section 4.4, Softening, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition as indicated in R309-535-10. Those standards are hereby incorporated by reference and compliance with those standards shall be required for removal by the lime-soda softening process.

(3) Removal by Manganese Greensand Filtration.

This process, consisting of the continuous feed of potassium permanganate to the influent of a manganese greensand filter, is more applicable to the removal of manganese than the removal of iron.

(a) Provisions shall be made to apply the permanganate as far ahead of the filter as practical and at a point immediately before the filter.

(b) An anthracite media cap of at least six inches shall be provided over manganese greensand.

(c) The normal filtration rate is three gpm/sf.

(d) The normal wash rate is 8 to 10 gpm/sf.

(e) Air washing shall be provided.

(f) Sample taps shall be provided:

(i) prior to application of permanganate,

(ii) immediately ahead of filtration,

(iii) at a point between the anthracite media and the manganese greensand,

(iv) halfway down the manganese greensand, and

(v) at the filter effluent.

(4) Removal by Ion Exchange.

This process is not acceptable where either the source water or wash water contains dissolved oxygen.

(5) Sequestration by Polyphosphates.

This process shall not be used when iron, manganese or a combination thereof exceeds 1.0 milligram per liter. The total phosphate applied shall not exceed 10 milligrams per liter as PO₄. Where phosphate treatment is used, satisfactory chlorine residuals shall be maintained in the distribution system and the

following required:

(a) feeding equipment shall conform to the requirements of R309-525-11(7),

(b) stock phosphate solution shall be kept covered and disinfected by carrying approximately 10 mg/l free chlorine residual,

(c) polyphosphates shall not be applied ahead of iron and manganese removal treatment. If no iron or manganese removal treatment is provided, the point of application shall be prior to any aeration, oxidation or disinfection steps, and

(d) phosphate chemicals must comply with ANSI/NSF Standard 60.

Sampling taps shall be provided for control purposes. Taps shall be located on each raw water source, and on each treatment unit influent and effluent.

Waste generated by iron and manganese control treatment shall be disposed of in accordance with R309-525-23.

R309-535-12. Point-of-Use and Point-of-Entry Treatment Devices.

Where drinking water does not meet the quality standards of R309-200 and the available water system treatment methods are determined to be unreasonably costly or otherwise undesirable, the Director may permit the public water supplier to install and maintain point-of-use or point-of-entry treatment devices. This approval shall only be given after receipt and satisfactory review of the following items.

(1) The Director shall only consider approving point-of-use or point-of-entry treatment upon receipt of an analysis that clearly demonstrates that central treatment is not feasible for the public water system. Unless waived by the Director, this analysis shall be in the form of an engineering report prepared by a professional engineer registered in the State of Utah. Systems serving fewer than 75 connections are excused from performing an analysis by a Registered Professional Engineer.

(2) The water system shall have a signed access agreement with each customer that allows water system personnel to enter their property on a scheduled basis to install and maintain the treatment devices. The agreement shall include educational information with regard to the health risks of consuming or cooking with water from non-treated taps. Systems with an initial 75% of their connections under a signed access agreement shall be allowed to proceed with the understanding that 100% of their connections are due within a 5 year period. For public water systems that own or control all connections to the public water system, this requirement will not apply.

(3) Documentation that legal authority, which includes a termination of service clause, has been adopted to ensure water system access to the property for installation, maintenance, servicing and sampling of each treatment unit. For public water systems that own or control all connections to the public water system, this requirement will not apply.

(4) Point-of-use or point-of-entry treatment devices used shall only be those proven to be appropriate, safe and effective as determined through testing and compliance with protocols established by EPA's Environmental Technology Verification Program (ETV) or the applicable ANSI/NSF Standard(s). A pilot study may be required to determine the suitability of the point-of-use or point-of-entry device in treating a particular source water. The scope and duration of the pilot study shall be determined by such factors as the characteristics of the raw water, manufacturer's ratings of the treatment device, and good engineering practices. The pilot study will generate data on service intervals, aid in specifying and calibrating alarm systems, and reveal any site specific problems with component fouling or microbial colonization.

(5) The water system shall provide an operation and maintenance plan demonstrating that the treatment units shall be installed and serviced in accordance with the manufacturer's

instructions and that compliance sampling as required in R309-215-6 shall take place. The system shall provide documentation of an operation and maintenance contract or schedule annually as required in R309-105-16(4). If the operation and maintenance of the POU/POE devices is performed by water system personnel, it shall only be performed by a water operator certified at the level of the water system.

(6) The performance indicating device for the point-of-use/point-of-entry treatment device that will be used shall be specified in the submittal for plan approval.

(7) The water system shall submit a customer education and out-reach plan that includes at a minimum annual frequency of contact.

(8) Point-of-use or point-of-entry treatment devices for compliance with the nitrate MCL shall only be considered if treatment is provided at all taps that are accessible to the public.

R309-535-13. New Treatment Processes or Equipment.

The policy of the Board is to encourage, rather than to obstruct, the development of new methods and equipment for the treatment of water. Nevertheless, any new processes or equipment must have been thoroughly tested in full-scale, comparable installations, before approval of plans can be issued. The U.S. Environmental Protection Agency (EPA) has created the Environmental Technology Verification (ETV) Program to facilitate the deployment of innovative or improved environmental technologies through performance verification and dissemination of information. NSF International (NSF) in cooperation with the EPA operates the Package Drinking Water Treatment Systems (PDWTS) pilot, one of 12 technology areas under ETV. Engineers and Manufacturers are referred to Manager, ETV project, NSF International, P.O. Box 130140, Ann Arbor, Michigan 48113-0140.

No new treatment process will be approved for use in Utah unless the designer or supplier can present evidence satisfactory to the Director that the process will insure the delivery of water of safe, sanitary quality, without imposing undue problems of supervision, operation and/or control.

KEY: drinking water, miscellaneous treatment, stabilization, iron and manganese control

August 28, 2013

19-4-104

Notice of Continuation March 22, 2010

R317. Environmental Quality, Water Quality.**R317-1. Definitions and General Requirements.****R317-1-1. Definitions.**

"Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

"Biological assessment" means an evaluation of the biological condition of a water body using biological surveys and other direct measurements of composition or condition of the resident living organisms.

"Biological criteria" means numeric values or narrative descriptions that are established to protect the biological condition of the aquatic life inhabiting waters that have been given a certain designated aquatic life use.

"Board" means the Utah Water Quality Board.

"BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

"Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

"CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

"COD" means chemical oxygen demand.

"Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

"Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

"Division" means the Utah State Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

"Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

"Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

"Human-induced stressor" means perturbations directly or indirectly caused by humans that alter the components, patterns, and/or processes of an ecosystem.

"Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

"Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

"Influent" means the total wastewater flow entering a wastewater treatment works.

"Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

"Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system.

The Board controls the installation of such systems.

"Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating Permit" is a State issued permit issued to any wastewater treatment works covered under Rules R317-3 or R317-5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems R317-4.

"Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

"Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

"Sewage" is synonymous with the term "domestic wastewater".

"Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

"Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

"SS" means suspended solids.

Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

"Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

"TSS" means total suspended solids.

"Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

"Use Attainability Analysis" means a structured scientific assessment of the factors affecting the attainment of the uses specified in R317-2-6. The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal criteria as described in 40 CFR 131.10(g) (1-6).

"Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

"Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

"Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these rules.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers) without first receiving a permit to do so from the Board or its authorized representative, except as provided herein.

A. Body Politic Required. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

B. Submission of Plans. Any person desiring a permit shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet or less and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

C. Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these rules.

D. Approval of Plans. Issuance of a construction permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes.

E. Permit Expiration. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

F. Exceptions.

1. Wastewater facilities that discharge to an existing sewer system and serve only units that are under single ownership, or serve multiple units under separate ownership where the wastewater facilities are under the sponsorship of the public sewer system to which they discharge. This exception does not apply to pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day).

2. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with rules for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the rules shall be determined by an on-site inspection by the appropriate health authority.

3. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.3 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these rules and under circumstances which assure compliance with water quality standards in R317-2.

2.4 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these rules and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of R317-2 (Water Quality Standards), except that the Board may waive compliance with these requirements for specific criteria listed in R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Board.

3.2 Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must

be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/l nor shall the arithmetic mean exceed 30 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500 per 100 ml or 250 per 100 ml respectively, during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 ml nor shall the geometric mean exceed 158 per 100 ml respectively during any 7-day period. Exceptions to this requirement may be allowed by the Board where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Board may allow exceptions to the requirements of (A), (B) and (D) above where the discharge will be of short duration and where there will be of no significant detrimental affect on receiving water quality or downstream beneficial uses.

G. The Board may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/l for a monthly average nor 65 mg/l for a weekly average provided the following criteria are met:

1. The lagoon system is operating within the organic and hydraulic design capacity established by R317-3,

2. The lagoon system is being properly operated and maintained,

3. The treatment system is meeting all other permit limits,

4. There are no significant or categorical industrial uses (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Executive Secretary to the Utah Water Quality Board that the IU is not contributing constituents in concentrations or quantities likely to significantly effect the treatment works,

5. A Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Extensions To Deadlines For Compliance.

The Board may, upon application of a waste discharger, allow extensions to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent

limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

7.1 Middle Bear River -- February 23, 2010

7.2 Chalk Creek -- December 23, 1997

7.3 Otter Creek -- December 23, 1997

7.4 Little Bear River -- May 23, 2000

7.5 Mantua Reservoir -- May 23, 2000

7.6 East Canyon Creek -- September 14, 2010

7.7 East Canyon Reservoir -- September 14, 2010

7.8 Kents Lake -- September 1, 2000

7.9 LaBaron Reservoir -- September 1, 2000

7.10 Minersville Reservoir -- September 1, 2000

7.11 Puffer Lake -- September 1, 2000

7.12 Scofield Reservoir -- September 1, 2000

7.13 Onion Creek (near Moab) -- July 25, 2002

- 7.14 Cottonwood Wash -- September 9, 2002
- 7.15 Deer Creek Reservoir -- September 9, 2002
- 7.16 Hyrum Reservoir -- September 9, 2002
- 7.17 Little Cottonwood Creek -- September 9, 2002
- 7.18 Lower Bear River -- September 9, 2002
- 7.19 Malad River -- September 9, 2002
- 7.20 Mill Creek (near Moab) -- September 9, 2002
- 7.21 Spring Creek -- September 9, 2002
- 7.22 Forsyth Reservoir -- September 27, 2002
- 7.23 Johnson Valley Reservoir -- September 27, 2002
- 7.24 Lower Fremont River -- September 27, 2002
- 7.25 Mill Meadow Reservoir -- September 27, 2002
- 7.26 UM Creek -- September 27, 2002
- 7.27 Upper Fremont River -- September 27, 2002
- 7.28 Deep Creek -- October 9, 2002
- 7.29 Uinta River -- October 9, 2002
- 7.30 Pineview Reservoir -- December 9, 2002
- 7.31 Browne Lake -- February 19, 2003
- 7.32 San Pitch River -- November 18, 2003
- 7.33 Newton Creek -- June 24, 2004
- 7.34 Panguitch Lake -- June 24, 2004
- 7.35 West Colorado -- August 4, 2004
- 7.36 Silver Creek -- August 4, 2004
- 7.37 Upper Sevier River -- August 4, 2004
- 7.38 Lower and Middle Sevier River -- August 17, 2004
- 7.39 Lower Colorado River -- September 20, 2004
- 7.40 Upper Bear River -- August 4, 2006
- 7.41 Echo Creek -- August 4, 2006
- 7.42 Soldier Creek -- August 4, 2006
- 7.43 East Fork Sevier River -- August 4, 2006
- 7.44 Koosharem Reservoir -- August 4, 2006
- 7.45 Lower Box Creek Reservoir -- August 4, 2006
- 7.46 Otter Creek Reservoir -- August 4, 2006
- 7.47 Thistle Creek -- July 9, 2007
- 7.48 Strawberry Reservoir -- July 9, 2007
- 7.49 Matt Warner Reservoir -- July 9, 2007
- 7.50 Calder Reservoir -- July 9, 2007
- 7.51 Lower Duchesne River -- July 9, 2007
- 7.52 Lake Fork River -- July 9, 2007
- 7.53 Brough Reservoir -- August 22, 2008
- 7.54 Steinaker Reservoir -- August 22, 2008
- 7.55 Red Fleet Reservoir -- August 22, 2008
- 7.56 Newcastle Reservoir -- August 22, 2008
- 7.57 Cutler Reservoir -- February 23, 2010
- 7.58 Pariette Draw -- September 28, 2010
- 7.59 Emigration Creek -- September 1, 2011
- 7.60 Jordan River -- June 27, 2012

R317-1-8. Penalty Criteria for Civil Settlement Negotiations.

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to \$10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to \$25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and

(4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.
2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - \$2,000 to \$7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.
2. Creation of a serious hazard to public health or the environment.
3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.
4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - \$500 to \$2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.
2. Substantial non-compliance with the requirements of a compliance schedule.
3. Substantial non-compliance with monitoring and reporting requirements.
4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.
5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to \$500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.
2. Minor violations of compliance schedule requirements.
3. Minor violations of reporting requirements.
4. Illegal discharges not covered in Categories A, B and C.
5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

- A. The project must be in addition to all regulatory compliance obligations;
- B. The project preferably should closely address the environmental effects of the violation;
- C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;
- D. The project must primarily benefit the environment rather than benefit the violator;
- E. The project must be judicially enforceable;
- F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

R317-1-9. Electronic Submissions and Electronic Signatures.

(a) Pursuant to the authority of Utah Code Ann. Subsection 46-4-501(a), the submission of Discharge Monitoring Reports and related information may be conducted electronically through the EPA's NetDMR program, provided the requirements of subsection (b) are met.

(b) A person may submit Discharge Monitoring Reports and related information only after (1) completion of a Subscriber Agreement in a form designated by the Executive Secretary to ensure that all requirements of 40 CFR 3, EPA's Cross - Media Electronic Reporting Regulation (CROMERR) are met; and (2) completion of subsequent steps specified by EPA's CROMERR, including setting up a subscriber account.

(c) The Subscriber Agreement will continue until terminated by its own terms, until modified by mutual consent or until terminated with 60 days written notice by any party.

(d) Any person who submits a Discharge Monitoring Report or related information under the NetDMR program, and who electronically signs the report or related information, is, by providing an electronic signature, making the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or

supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

KEY: water pollution, waste disposal, industrial waste, effluent standards

August 19, 2013

19-5

Notice of Continuation October 2, 2012

R317. Environmental Quality, Water Quality.**R317-2. Standards of Quality for Waters of the State.****R317-2-1A. Statement of Intent.**

Whereas the pollution of the waters of this state constitute a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas such pollution is contrary to the best interests of the state and its policy for the conservation of the water resources of the state, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the state without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing water pollution; to place first in priority those control measures directed toward elimination of pollution which creates hazards to the public health; to insure due consideration of financial problems imposed on water polluters through pursuit of these objectives; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

R317-2-1B. Authority.

These standards are promulgated pursuant to Sections 19-5-104 and 19-5-110.

R317-2-1C. Triennial Review.

The water quality standards shall be reviewed and updated, if necessary, at least once every three years. The Director will seek input through a cooperative process from stakeholders representing state and federal agencies, various interest groups, and the public to develop a preliminary draft of changes. Proposed changes will be presented to the Water Quality Board for information. Informal public meetings may be held to present preliminary proposed changes to the public for comments and suggestions. Final proposed changes will be presented to the Water Quality Board for approval and authorization to initiate formal rulemaking. Public hearings will be held to solicit formal comments from the public. The Director will incorporate appropriate changes and return to the Water Quality Board to petition for formal adoption of the proposed changes following the requirements of the Utah Rulemaking Act, Title 63G, Chapter 3.

R317-2-2. Scope.

These standards shall apply to all waters of the state and shall be assigned to specific waters through the classification procedures prescribed by Sections 19-5-104(5) and 19-5-110 and R317-2-6.

R317-2-3. Antidegradation Policy.**3.1 Maintenance of Water Quality**

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Director, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment

associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 Category 1 Waters

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the rules for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

3.3 Category 2 Waters

Category 2 Waters are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

3.4 Category 3 Waters

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

3.5 Antidegradation Review (ADR)

An antidegradation review will determine whether the proposed activity complies with the applicable antidegradation requirements for receiving waters that may be affected.

An antidegradation review (ADR) may consist of two parts or levels. A Level I review is conducted to insure that existing uses will be maintained and protected.

Both Level I and Level II reviews will be conducted on a parameter-by-parameter basis. A decision to move to a Level II review for one parameter does not require a Level II review for other parameters. Discussion of parameters of concern is those expected to be affected by the proposed activity.

Antidegradation reviews shall include opportunities for public participation, as described in Section 3.5e.

a. Activities Subject to Antidegradation Review (ADR)

1. For all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Director may conduct an ADR on any projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected.

2. For Category 1 Waters and Category 2 Waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

3. For Category 3 Waters, reviews shall be consistent with the requirements established in this section

b. An Anti-degradation Level II review is not required

where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity or for existing permitted facilities, water quality will not be further lowered by the proposed activity, examples include situations where:

(a) the proposed concentration-based effluent limit is less than or equal to the ambient concentration in the receiving water during critical conditions; or

(b) a UPDES permit is being renewed and the proposed effluent concentration and loading limits are equal to or less than the concentration and loading limits in the previous permit; or

(c) a UPDES permit is being renewed and new effluent limits are to be added to the permit, but the new effluent limits are based on maintaining or improving upon effluent concentrations and loads that have been observed, including variability; or

2. Assimilative capacity (based upon concentration) is not available or has previously been allocated, as indicated by water quality monitoring or modeling information. This includes situations where:

(a) the water body is included on the current 303(d) list for the parameter of concern; or

(b) existing water quality for the parameter of concern does not satisfy applicable numeric or narrative water quality criteria; or

(c) discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (i.e., where TMDLs are established, and changes in effluent limits that are consistent with the existing load allocation would not trigger an antidegradation review).

Under conditions (a) or (b) the effluent limit in an UPDES permit may be equal to the water quality numeric criterion for the parameter of concern.

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired,

4. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general discharge permits, CWA Section 404 general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality will be lowered.

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

c. Anti-degradation Review Process

For all activities requiring a Level II review, the Division will notify affected agencies and the public with regards to the requested proposed activity and discussions with stakeholders may be held. In the case of Section 402 discharge permits, if it is determined that a discharge will be allowed, the Director will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirements or determinations:

1. Will all Statutory and regulatory requirements be met?

The Director will review to determine that there will be achieved all statutory and regulatory requirements for all new

and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the discharge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Director will consider whether schedules of compliance or other plans have been established when evaluating whether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) pollutant trading

(g) water conservation

(h) water recycle and reuse

(i) alternative discharge locations or alternative receiving waters

(j) land application

(k) total containment

(l) improved operation and maintenance of existing treatment systems

(m) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water in the stream for instream flow purposes than to remove the discharge to the stream.

3. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include, but are not limited to, the following:

- (a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);
- (b) increased production;
- (c) improved community tax base;
- (d) housing;
- (e) correction of an environmental or public health problem; and
- (f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

4. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Director to authorize proposed activities that would otherwise not be authorized.

5. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

6. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

7. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Director will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

d. Special Procedures for Drinking Water Sources

An Antidegradation Level II Review will be required by the Director for discharges to waters with a Class IC drinking water use assigned.

Depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Director in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exists, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems.

Additional monitoring may include analyses for viruses, Giardia, Cryptosporidium, other pathogenic organisms, and/or

any contaminant for which drinking water MCLs exist. Depending on the results of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Director after consultation with the Division of Drinking Water and the downstream drinking water users.

e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. When possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting or certifying action. In the case of UPDES permits, public notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed including results of the Level I and Level II reviews. In the case of Section 404 permits from the Corps of Engineers, the Division of Water Quality will develop any needed 401 Certifications and the public notice may be published in conjunction with the US Corps of Engineers public notice procedures. Other permits requiring a Level II review will receive a separate public notice according to the normal State public notice procedures.

f. Implementation Procedures

The Director shall establish reasonable protocols and guidelines (1) for completing technical, social, and economic need demonstrations, (2) for review and determination of adequacy of Level II ADRs and (3) for determination of additional treatment requirements. Protocols and guidelines will consider federal guidance and will include input from local governments, the regulated community, and the general public. The Director will inform the Water Quality Board of any protocols or guidelines that are developed.

R317-2-4. Colorado River Salinity Standards.

In addition to quality protection afforded by these rules to waters of the Colorado River and its tributaries, such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S. Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996, 1999, 2002, 2005, 2008, and 2011 reviews of the above documents.

R317-2-5. Mixing Zones.

A mixing zone is a limited portion of a body of water, contiguous to a discharge, where dilution is in progress but has not yet resulted in concentrations which will meet certain standards for all pollutants. At no time, however, shall concentrations within the mixing zone be allowed which are acutely lethal as determined by bioassay or other approved procedure. Mixing zones may be delineated for the purpose of guiding sample collection procedures and to determine permitted effluent limits. The size of the chronic mixing zone in rivers and streams shall not exceed 2500 feet and the size of an acute mixing zone shall not exceed 50% of stream width nor have a residency time of greater than 15 minutes. Streams with a flow equal to or less than twice the flow of a point source discharge may be considered to be totally mixed. The size of the chronic mixing zone in lakes and reservoirs shall not exceed

200 feet and the size of an acute mixing zone shall not exceed 35 feet. Domestic wastewater effluents discharged to mixing zones shall meet effluent requirements specified in R317-1-3.

5.1 Individual Mixing Zones. Individual mixing zones may be further limited or disallowed in consideration of the following factors in the area affected by the discharge:

- a. Bioaccumulation in fish tissues or wildlife,
- b. Biologically important areas such as fish spawning/nursery areas or segments with occurrences of federally listed threatened or endangered species,
- c. Potential human exposure to pollutants resulting from drinking water or recreational activities,
- d. Attraction of aquatic life to the effluent plume, where toxicity to the aquatic life is occurring.
- e. Toxicity of the substance discharged,
- f. Zone of passage for migrating fish or other species (including access to tributaries), or
- g. Accumulative effects of multiple discharges and mixing zones.

R317-2-6. Use Designations.

The Board as required by Section 19-5-110, shall group the waters of the state into classes so as to protect against controllable pollution the beneficial uses designated within each class as set forth below. Surface waters of the state are hereby classified as shown in R317-2-13.

6.1 Class 1 -- Protected for use as a raw water source for domestic water systems.

- a. Class 1A -- Reserved.
- b. Class 1B -- Reserved.

c. Class 1C -- Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water

6.2 Class 2 -- Protected for recreational use and aesthetics.

a. Class 2A -- Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking, diving, and water skiing.

b. Class 2B -- Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.

6.3 Class 3 -- Protected for use by aquatic wildlife.

a. Class 3A -- Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.

b. Class 3B -- Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.

c. Class 3C -- Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.

d. Class 3D -- Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.

e. Class 3E -- Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.

6.4 Class 4 -- Protected for agricultural uses including irrigation of crops and stock watering.

6.5 Class 5 -- The Great Salt Lake.

a. Class 5A Gilbert Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation south of the Union Pacific Causeway, excluding all of the Farmington Bay south of the Antelope Island Causeway and salt evaporation ponds.

Beneficial Uses -- Protected for frequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

b. Class 5B Gunnison Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and west of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

c. Class 5C Bear River Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and east of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

d. Class 5D Farmington Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation east of Antelope Island and south of the Antelope Island Causeway, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

e. Class 5E Transitional Waters along the Shoreline of the Great Salt Lake Geographical Boundary -- All waters below approximately 4,208-foot elevation to the current lake elevation of the open water of the Great Salt Lake receiving their source water from naturally occurring springs and streams, impounded wetlands, or facilities requiring a UPDES permit. The geographical areas of these transitional waters change corresponding to the fluctuation of open water elevation.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

R317-2-7. Water Quality Standards.

7.1 Application of Standards

The numeric criteria listed in R317-2-14 shall apply to each of the classes assigned to waters of the State as specified in R317-2-6. It shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated, except as provided in R317-1-3.1. At a minimum, assessment of the beneficial use support for waters of the state will be conducted biennially and available for a 30-day period of public comment and review. Monitoring locations and target indicators of water quality standards shall be prioritized and published yearly. For water quality assessment purposes, up to 10 percent of the representative samples may exceed the minimum or maximum criteria for dissolved oxygen, pH, E. coli, total dissolved solids, and temperature, including situations where such criteria have been adopted on a site-specific basis. Site-specific standards may be adopted by rulemaking where biomonitoring data, bioassays, or other scientific analyses indicate that the statewide criterion is over or under protective of the designated uses or where natural or unalterable conditions or other factors as defined in 40 CFR 131.10(g) prevent the attainment of the statewide criteria as prescribed in Subsections R317-2-7.2, and R317-2-7.3, and Section R317-2-14.

7.2 Narrative Standards

It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as

unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3.

7.3 Biological Water Quality Assessment and Criteria

Waters of the State shall be free from human-induced stressors which will degrade the beneficial uses as prescribed by the biological assessment processes and biological criteria set forth below:

a. Quantitative biological assessments may be used to assess whether the purposes and designated uses identified in R317-2-6 are supported.

b. The results of the quantitative biological assessments may be used for purposes of water quality assessment, including, but not limited to, those assessments required by 303(d) and 305(b) of the federal Clean Water Act (33 U.S.C. 1313(d) and 1315(b)).

c. Quantitative biological assessments shall use documented methods that have been subject to technical review and produce consistent, objective and repeatable results that account for methodological uncertainty and natural environmental variability.

d. If biological assessments reveal a biologically degraded water body, specific pollutants responsible for the degradation will not be formally published (i.e., Biennial Integrated Report, TMDL) until a thorough evaluation of potential causes, including nonchemical stressors (e.g., habitat degradation or hydrological modification or criteria described in 40 CFR 131.10 (g)(1 - 6) as defined by the Use Attainability Analysis process), has been conducted.

R317-2-8. Protection of Downstream Uses.

All actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses.

R317-2-9. Intermittent Waters.

Failure of a stream to meet water quality standards when stream flow is either unusually high or less than the 7-day, 10-year minimum flow shall not be cause for action against persons discharging wastes which meet both the requirements of R317-1 and the requirements of applicable permits.

R317-2-10. Laboratory and Field Analyses.

10.1 Laboratory Analyses

All laboratory examinations of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures as approved by the Director by the Utah Office of State Health Laboratory or by a laboratory certified by the Utah Department of Health.

10.2 Field Analyses

All field analyses to determine compliance with these rules shall be conducted in accordance with standard procedures specified by the Utah Division of Water Quality.

R317-2-11. Public Participation.

Public hearings will be held to review all proposed revisions of water quality standards, designations and classifications, and public meetings may be held for consideration of discharge requirements set to protect water uses under assigned classifications.

R317-2-12. Category 1 and Category 2 Waters.

12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

1. Category 2 Waters as listed in R317-2-12.2.

2. Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

2. Green River Drainage

Price River (Lower Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

3. Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

4. Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

5. Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

6. Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from Main Street in Coalville to headwaters.

Weber River and tributaries, from Utah State Route 32 near Oakley to headwaters.

7. Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard

in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County.)

Bell Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters (Salt Lake County.)

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County.)

8. Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

9. Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

10. Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

11. Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Haight Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Haight Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 Category 2 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 2 Waters:

a. Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream.

Electric Lake.

R317-2-13. Classification of Waters of the State (see R317-2-6).

a. Colorado River Drainage

13.1 Upper Colorado River Basin

TABLE

Paria River and tributaries, from state line to headwaters	2B	3C	4
All tributaries to Lake Powell, except as listed below	2B	3B	4
Tributaries to Escalante River from confluence with Boulder Creek to headwaters, including Boulder Creek	2B 3A		4
Dirty Devil River and tributaries, from Lake Powell to Fremont River	2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters	2B 3A		4
Fremont River and tributaries, from confluence with Muddy Creek to Capitol Reef National Park, except as listed below	1C	2B 3C	4
Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park	2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B 3A	
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C 2A	3A	4
Muddy Creek and tributaries, from confluence with Fremont River to Highway U-10 crossing, except as listed below	2B	3C	4
Quitcupah Creek and tributaries, from Highway U-10 crossing to headwaters	2B 3A		4
Ivie Creek and tributaries, from Highway U-10 to headwaters	2B 3A		4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B 3A	4
San Juan River and tributaries, from Lake Powell to state line except as listed below:	1C 2A	3B	4
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B 3A	4
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters	2B 3A		4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B 3A	4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B 3A	4
Spring Creek and tributaries, from confluence with Vega			

Creek to headwaters	2B	3A	4	Cottonwood Canal, Emery County	1C	2B	3E	4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A	4	Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course	2B	3C	4
Colorado River and tributaries, from Lake Powell to state line except as listed below	1C	2A	3B	4	Except as listed below Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters	1C	2B	3A
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A	4	Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water Treatment Plant intake.	2B	3A	4
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters	2B	3C	4	Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B	3A	4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2B	3A	4	Range Creek and tributaries, from confluence with Green River to Range Creek Ranch	2B	3A	4
Dolores River and tributaries, from confluence with Colorado River to state line	2B	3C	4	Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B	3A	4
Roc Creek and tributaries, from confluence with Dolores River to headwaters	2B	3A	4	Rock Creek and tributaries, from confluence with Green River to headwaters	2B	3A	4	4
LaSal Creek and tributaries, from state line to headwaters	2B	3A	4	Nine Mile Creek and tributaries, from confluence with Green River to headwaters	2B	3A	4	4
Lion Canyon Creek and tributaries, from state line to headwaters	2B	3A	4	Pariette Draw and tributaries, from confluence with Green River to headwaters	2B	3B	3D	4
Little Dolores River and tributaries, from confluence with Colorado River to state line	2B	3C	4	Willow Creek and tributaries (Uintah County), from confluence with Green River to headwaters	2B	3A	4	4
Bitter Creek and tributaries, from confluence with Colorado River to headwaters	2B	3C	4	White River and tributaries, from confluence with Green River to state line, except as listed below	2B	3B	4	4

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line except as listed below:	1C	2A	3B	4	Bitter Creek and Tributaries from White River to Headwaters	2B	3A	4
Thompson Creek and tributaries from Interstate Highway 70 to headwaters	2B	3C	4	4	Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake, except as listed below	2B	3B	4
San Rafael River and tributaries, from confluence with Green River to confluence with Ferron Creek	2B	3C	4	4	Uinta River and tributaries, From confluence with Duchesne River to Highway US-40 crossing	2B	3B	4
Ferron Creek and tributaries, from confluence with San Rafael River to Millsite Reservoir	2B	3C	4	4	Uinta River and tributaries, From Highway US-4- crossing to headwaters	2B	3A	4
Ferron Creek and tributaries, from Millsite Reservoir to headwaters	1C	2B	3A	4	Power House Canal from Confluence with Uinta River to headwaters	2B	3A	4
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing	2B	3C	4	4	Whiterocks River and Canal, From Tridell Water Treatment Plant to Headwaters	1C	2B	3A
Huntington Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A	4	Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B	3A
Cottonwood Creek and tributaries, from confluence with Huntington Creek to Highway U-57 crossing	2B	3C	4	4	Lake Fork River and tributaries, from confluence with Duchesne River to headwaters	1C	2B	3A
Highway U-57 crossing Cottonwood Creek and tributaries, from Highway U-57 crossing to headwaters	1C	2B	3A	4				

Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B	3E	4				
					TABLE			
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B	3E	4	Beaver Dam Wash and tributaries, from Motoqua to headwaters	2B	3B	4
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B	3B	4	Virgin River and tributaries from state line to Quail Creek diversion except as listed below	2B	3B	4
Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B	3A	4	Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B	3B
Big Brush Creek and tributaries, from confluence with Green River to Tyzack (Red Fleet) Dam		2B	3B	4	Santa Clara River and tributaries, from Gunlock Reservoir to headwaters	2B	3A	4
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B	3A	4	Leed's Creek, from confluence with Quail Creek to headwaters	2B	3A	4
Jones Hole Creek and tributaries, from confluence with Green River to headwaters		2B	3A		Quail Creek from Quail Creek Reservoir to headwaters	1C	2B	3A
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B	3A	4	Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir	2B	3A	4
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B	3A	4	Ash Creek and tributaries, From Ash Creek Reservoir to headwaters	2B	3A	4
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam except as listed below:	2A	3A	4		Virgin River and tributaries, from the Quail Creek diversion to headwaters, except as listed below	1C	2B	3C
Sears Creek and tributaries, Daggett County		2B	3A		North Fork Virgin River and tributaries	1C	2A	3A
Tolivers Creek and tributaries, Daggett County		2B	3A		East Fork Virgin River, from town of Glendale to headwaters	2B	3A	4
Red Creek and tributaries, from confluence with Green River to state line	2B	3C	4		Kolob Creek, from confluence with Virgin River to headwaters	2B	3A	4
Jackson Creek and tributaries, Daggett County		2B	3A		TABLE			
Davenport Creek and tributaries, Daggett County		2B	3A		Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon	2B	3C	4
Goslin Creek and tributaries, Daggett County		2B	3A		Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters	2B	3A	4
Gorge Creek and tributaries, Daggett County		2B	3A		Johnson Wash and tributaries, from state line to confluence with Skutumpah Canyon	2B	3C	4
Beaver Creek and tributaries, Daggett County		2B	3A		Johnson Wash and tributaries, from confluence with Skutumpah Canyon to headwaters	2B	3A	4
O-Wi-Yu-Kuts Creek and tributaries, Daggett County		2B	3A		13.3 Bear River Basin			
Tributaries to Flaming Gorge Reservoir, except as listed below		2B	3A	4	a. Bear River Drainage			
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3C	4	TABLE			
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3A		Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:	2B	3B	3D
All Tributaries of Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B	3A	4	Perry Canyon Creek from U.S. Forest boundary to headwaters	2B	3A	4
					Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (the Mayor's Pond)	2B	3C	4
					Box Elder Creek, from Brigham			

13.2 Lower Colorado River Basin

City Reservoir (the Mayor's Pond) to headwaters	2B 3A	4	Wheeler Creek from Confluence with Ogden River to headwaters	1C 2B 3A	4
Salt Creek, from confluence with Bear River to Crystal Hot Springs	2B 3B 3D		All tributaries to Pineview Reservoir	1C 2B 3A	4
Malad River and tributaries, from confluence with Bear River to state line	2B 3C		Strongs Canyon Creek and Tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Little Bear River and tributaries, from Cutler Reservoir to headwaters	2B 3A 3D 4		Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C 2B 3A	
Logan River and tributaries, from Cutler Reservoir to headwaters	2B 3A 3D 4		Spring Creek and tributaries, From U.S. National Forest Boundary to headwaters	1C 2B 3A	4
Blacksmith Fork and tributaries, from confluence with Logan River to headwaters	2B 3A	4	Weber River and tributaries, from Stoddard diversion to headwaters	1C 2B 3A	4
Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir	2B 3A	4	13.5 Utah Lake-Jordan River Basin		
Clarkston Creek and tributaries, from Newton Reservoir to headwaters	2B 3A	4	a. Jordan River Drainage		
Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters	2B 3A	4	TABLE		
Summit Creek and tributaries, from confluence with Bear River to headwaters	2B 3A	4	Jordan River, from Farmington Bay to North Temple Street, Salt Lake City	2B 3B * 3D	4
Cub River and tributaries, from confluence with Bear River to state line, except as listed below:	2B 3B	4	State Canal, from Farmington Bay to confluence with the Jordan River	2B 3B * 3D	4
High Creek and tributaries, from confluence with Cub River to headwaters	2B 3A	4	Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek	2B 3B *	4
All tributaries to Bear Lake from Bear Lake to headwaters, except as listed below	2B 3A	4	Surplus Canal from Great Salt Lake to the diversion from the Jordan River	2B 3B * 3D	4
Swan Springs tributary to Swan Creek	1C 2B 3A		Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion	2B 3A	4
Bear River and tributaries in Rich County	2B 3A	4	Jordan River, from Narrows Diversion to Utah Lake	1C 2B 3B	4
Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)	2B 3A	4	City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant	2B 3A	
Mill Creek and tributaries, from state line to headwaters (Summit County)	2B 3A	4	City Creek, from City Creek Water Treatment Plant to headwaters	1C 2B 3A	
13.4 Weber River Basin			Red Butte Creek and tributaries from Liberty Park pond inlet to Red Butte Reservoir	2B 3A	4
a. Weber River Drainage			Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C 2B 3A	
TABLE			Emigration Creek and tributaries, from 1100 East in Salt Lake City to headwaters	2B 3A	4
Willard Creek, from Willard Bay Reservoir to headwaters	2B 3A	4	Parley's Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir	1C 2B 3A	
Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:	2B 3C 3D	4	Parley's Creek and tributaries, from Mountain Dell Reservoir to headwaters	1C 2B 3A	
Four Mile Creek from I-15 To headwaters	2B 3A	4	Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate Highway 15	2B 3C	4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below	2B 3A	4	Mill Creek (Salt Lake County) and tributaries from Interstate Highway 15 to headwaters	2B 3A	4
Ogden River and tributaries, From confluence with Weber River To Pineview Dam, except as listed Below	2A 3A	4			

Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant	2B 3A	4	headwaters	2B 3B	4
Big Cottonwood Creek and tributaries, from Big Cottonwood Water Treatment Plant to headwaters	1C 2B 3A		Rock Canyon Creek and tributaries (East of Provo) from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Deaf Smith Canyon Creek and tributaries	1C 2B 3A	4	Mill Race (except from Interstate Highway 15 to the Provo City WWTP discharge) and tributaries from Utah Lake to headwaters	2B 3B	4
Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant	2B 3A	4	Mill Race from Interstate Highway 15 to the Provo City wastewater treatment plant discharge	2B 3B	4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C 2B 3A		Spring Creek and tributaries from Utah Lake (Provo Bay) to 50 feet upstream from the east boundary of the Industrial Parkway Road Right-of-way	2B 3B	4
Bell Canyon Creek and tributaries, from lower Bell's Canyon reservoir to headwaters	1C 2B 3A		Tributary to Spring Creek (Utah County) which receives the Springville City WWTP effluent from confluence with Spring Creek to headwaters	2B 3D	4
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C 2B 3A		Spring Creek and tributaries from 50 feet upstream from the east boundary of the Industrial Parkway Road right-of-way to the headwaters	2B 3A	4
Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C 2B 3A		Ironton Canal from Utah Lake (Provo Bay) to the east boundary of the Denver and Rio Grande Western Railroad right-of-way	2B 3C	4
South Fork of Dry Creek and tributaries, from Draper			Ironton Canal from the east boundary of the Denver and Rio Grande Western Railroad right-of-way to the point of diversion from Spring Creek	2B 3A	4
Irrigation Company diversion to headwaters	1C 2B 3A		Hobble Creek and tributaries, from Utah Lake to headwaters	2B 3A	4
All permanent streams on east slope of Oquirrh Mountains (Coon, Barney's, Bingham, Butterfield, and Rose Creeks)	2B 3D	4	Dry Creek and tributaries from Utah Lake (Provo Bay) to Highway-US 89	2B 3E	4
Kersey Creek from confluence of C-7 Ditch to headwaters	2B 3D		Dry Creek and tributaries from Highway-US 89 to headwaters	2B 3A	4

* Site specific criteria for dissolved oxygen. See Table 2.14.5.

b. Provo River Drainage

Provo River and tributaries, from Utah Lake to Murdock diversion	2B 3A	4	Spanish Fork River and tributaries, from Utah Lake to diversion at Moark Junction	2B 3B 3D	4
Provo River and tributaries, from Murdock Diversion to headwaters, except as listed below	1C 2B 3A	4	Spanish Fork River and tributaries, from diversion at Moark Junction to headwaters	2B 3A	4
Upper Falls drainage above Provo City diversion	1C 2B 3A		Benjamin Slough and tributaries from Utah Lake to headwaters, except as listed below	2B 3B	4
Bridal Veil Falls drainage above Provo City diversion	1C 2B 3A		Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8 S., R.1 E.) to headwaters	2B 3C	4
Lost Creek and tributaries above Provo City diversion	1C 2B 3A		Salt Creek, from Nephi diversion to headwaters	2B 3A	4

c. Utah Lake Drainage

Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters	2B 3A	4	Currant Creek, from mouth of Goshen Canyon to Mona Reservoir	2B 3A	4
American Fork Creek and tributaries, from diversion at mouth of American Fork Canyon to headwaters	2B 3A	4	Currant Creek, from Mona Reservoir to headwaters	2B 3A	4
Spring Creek and tributaries, from Utah Lake near Lehi to headwaters	2B 3A	4	Peteetneet Creek and tributaries, from irrigation diversion above Maple Dell to headwaters	2B 3A	4
Lindon Hollow Creek and tributaries, from Utah Lake to			Summit Creek and tributaries (above Santaquin), from U.S. National Forest boundary to headwaters	2B 3A	4
			All other permanent streams		

entering Utah Lake 2B 3B 4

13.6 Sevier River Basin
a. Sevier River Drainage

TABLE

Sevier River and tributaries from Sevier Lake to Gunnison Bend Reservoir to U.S.National Forest boundary except as listed below 2B 3C 4

Beaver River and tributaries from Minersville City to headwaters 2B 3A 4

Little Creek and tributaries, From irrigation diversion to Headwaters 2B 3A 4

Pinto Creek and tributaries, From Newcastle Reservoir to Headwaters 2B 3A 4

Coal Creek and tributaries 2B 3A 4

Summit Creek and tributaries 2B 3A 4

Parowan Creek and tributaries 2B 3A 4

Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including: 2B 3A 4

Pioneer Creek and tributaries, Millard County 2B 3A 4

Chalk Creek and tributaries, Millard County 2B 3A 4

Meadow Creek and tributaries, Millard County 2B 3A 4

Corn Creek and tributaries, Millard County 2B 3A 4

Sevier River and tributaries below U.S. National Forest boundary from Gunnison Bend Reservoir to Annabella Diversion except as listed below 2B 3B 4

Oak Creek and tributaries, Millard County 2B 3A 4

Round Valley Creek and tributaries, Millard County 2B 3A 4

Judd Creek and tributaries, Juab County 2B 3A 4

Meadow Creek and tributaries, Juab County 2B 3A 4

Cherry Creek and tributaries Juab County 2B 3A 4

Tanner Creek and tributaries, Juab County 2B 3E 4

Baker Hot Springs, Juab County 2B 3D 4

Chicken Creek and tributaries, Juab County 2B 3A 4

San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing except As listed below: 2B 3C 3D 4

Twelve Mile Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters 2B 3A 4

Six Mile Creek and tributaries, Sanpete County 2B 3A 4

Manti Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters 2B 3A 4

Ephraim Creek (Cottonwood Creek) and tributaries, from U.S. Forest Service to headwaters 2B 3A 4

Oak Creek and tributaries, from U.S. Forest Service boundary near Spring City to headwaters 2B 3A 4

Fountain Green Creek and tributaries, from U.S. Forest Service boundary to headwaters 2B 3A 4

San Pitch River and tributaries, from Highway U-132 crossing to headwaters 2B 3A 4

Tributaries to Sevier River from Gunnison Bend Reservoir to Annabelle Diversion from U.S. National Forest boundary to headwaters 2B 3A 4

Sevier River and tributaries, from Annabella diversion to headwaters 2B 3A 4

Monroe Creek and tributaries, from diversion to headwaters 2B 3A 4

Little Creek and tributaries, from irrigation diversion to headwaters 2B 3A 4

Pinto Creek and tributaries, from Newcastle Reservoir to headwaters 2B 3A 4

Coal Creek and tributaries 2B 3A 4

Summit Creek and tributaries 2B 3A 4

Parowan Creek and tributaries 2B 3A 4

Duck Creek and tributaries 1C 2B 3A 4

13.7 Great Salt Lake Basin
a. Western Great Salt Lake Drainage

TABLE

Grouse Creek and tributaries, Box Elder County 2B 3A 4

Muddy Creek and tributaries, Box Elder County 2B 3A 4

Dove Creek and tributaries, Box Elder County 2B 3A 4

Pine Creek and tributaries, Box Elder County 2B 3A 4

Rock Creek and tributaries, Box Elder County 2B 3A 4

Fisher Creek and tributaries, Box Elder County 2B 3A 4

Dunn Creek and tributaries, Box Elder County 2B 3A 4

Indian Creek and tributaries, Box Elder County 2B 3A 4

Tenmile Creek and tributaries, Box Elder County 2B 3A 4

Curlew (Deep) Creek, Box Elder County 2B 3A 4

Blue Creek and tributaries, from

Great Salt Lake to Blue Creek Reservoir	2B	3D	4	Lake Creek, from Garrison (Pruess) Reservoir to Nevada state line	2B 3A	4
Blue Creek and tributaries, from Blue Creek Reservoir to headwaters	2B	3B	4	Snake Creek and tributaries, Millard County	2B 3B	4
All perennial streams on the east slope of the Pilot Mountain Range	1C	2B 3A	4	Salt Marsh Spring Complex, Millard County	2B 3A	
Donner Creek and tributaries, from irrigation diversion to Utah-Nevada state line	2B 3A		4	Twin Springs, Millard County	2B 3B	
Bettridge Creek and tributaries, from irrigation diversion to Utah-Nevada state line	2B 3A		4	Tule Spring, Millard County	2B 3C 3D	
North Willow Creek and tributaries, Tooele County	2B 3A		4	Coyote Spring Complex, Millard County	2B 3C 3D	
South Willow Creek and tributaries, Tooele County	2B 3A		4	Hamblin Valley Wash and tributaries, from Nevada state line to headwaters (Beaver and Iron Counties)	2B 3D	4
Hickman Creek and tributaries, Tooele County	2B 3A		4	Indian Creek and tributaries, Beaver County, from Indian Creek Reservoir to headwaters	2B 3A	4
Barlow Creek and tributaries, Tooele County	2B 3A		4	Shoal Creek and tributaries, Iron County	2B 3A	4
Clover Creek and tributaries, Tooele County	2B 3A		4	b. Farmington Bay Drainage		
Faust Creek and tributaries, Tooele County	2B 3A		4	TABLE		
Vernon Creek and tributaries, Tooele County	2B 3A		4	Corbett Creek and tributaries, from Highway to headwaters	2B 3A	4
Ophir Creek and tributaries, Tooele County	2B 3A		4	Kays Creek and tributaries, from Farmington Bay to U.S. National Forest boundary	2B 3B	4
Soldier Creek and Tributaries from the Drinking Water Treatment Facility Headwaters, Tooele County	1C	2B 3A	4	North Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	2B 3A	4
Settlement Canyon Creek and tributaries, Tooele County	2B 3A		4	Middle Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Middle Canyon Creek and tributaries, Tooele County	2B 3A		4	South Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Tank Wash and tributaries, Tooele County	2B 3A		4	Snow Creek and tributaries	2B 3C	4
Basin Creek and tributaries, Juab and Tooele Counties	2B 3A		4	Holmes Creek and tributaries, from Farmington Bay to U.S. National Forest boundary	2B 3B	4
Thomas Creek and tributaries, Juab County	2B 3A		4	Holmes Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Indian Farm Creek and tributaries, Juab County	2B 3A		4	Baer Creek and tributaries, from Farmington Bay to Interstate Highway 15	2B 3C	4
Cottonwood Creek and tributaries, Juab County	2B 3A		4	Baer Creek and tributaries, from Interstate Highway 15 to Highway US-89	2B 3B	4
Red Cedar Creek and tributaries, Juab County	2B 3A		4	Baer Creek and tributaries, from Highway US-89 to headwaters	1C 2B 3A	4
Granite Creek and tributaries, Juab County	2B 3A		4	Shepard Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Trout Creek and tributaries, Juab County	2B 3A		4	Farmington Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary	2B 3B	4
Birch Creek and tributaries, Juab County	2B 3A		4	Farmington Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Deep Creek and tributaries, from Rock Spring Creek to headwaters, Juab and Tooele Counties	2B 3A		4	Rudd Creek and tributaries, from Davis aqueduct to headwaters	2B 3A	4
Cold Spring, Juab County	2B	3C 3D				
Cane Spring, Juab County	2B	3C 3D				

Steed Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A	4
Davis Creek and tributaries, from Highway US-89 to headwaters		2B 3A	4
Lone Pine Creek and tributaries, from Highway US-89 to headwaters		2B 3A	4
Ricks Creek and tributaries, from Highway I-15 to headwaters	1C	2B 3A	4
Barnard Creek and tributaries, from Highway US-89 to headwaters		2B 3A	4
Parrish Creek and tributaries, from Davis Aqueduct to headwaters		2B 3A	4
Deuel Creek and tributaries, (Centerville Canyon) from Davis Aqueduct to headwaters		2B 3A	4
Stone Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B 3A	4
Stone Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A	4
Barton Creek and tributaries, from U.S. National Forest boundary to headwaters		2B 3A	4
Mill Creek (Davis County) and tributaries, from confluence with State Canal to U.S. National Forest boundary		2B 3B	4
Mill Creek (Davis County) and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A	4
North Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters		2B 3A	4
Howard Slough		2B 3C	4
Hooper Slough		2B 3C	4
Willard Slough		2B 3C	4
Willard Creek to Headwaters	1C	2B 3A	4
Chicken Creek to Headwaters	1C	2B 3A	4
Cold Water Creek to Headwaters	1C	2B 3A	4
One House Creek to Headwaters	1C	2B 3A	4
Garner Creek to Headwaters	1C	2B 3A	4

**13.8 Snake River Basin
a. Raft River Drainage (Box Elder County)**

TABLE

Raft River and tributaries		2B 3A	4
Clear Creek and tributaries, from Utah-Idaho state line to headwaters		2B 3A	4
Onemile Creek and tributaries, from Utah-Idaho state line to headwaters		2B 3A	4
George Creek and tributaries, from Utah-Idaho state line to headwaters		2B 3A	4
Johnson Creek and tributaries, from Utah-Idaho state line to headwaters		2B 3A	4
Birch Creek and tributaries, from state line to headwaters		2B 3A	4

Pole Creek and tributaries, from state line to headwaters	2B 3A	4
Goose Creek and tributaries	2B 3A	4
Hardesty Creek and tributaries, from state line to headwaters	2B 3A	4
Meadow Creek and tributaries, from state line to headwaters	2B 3A	4

13.9 All irrigation canals and ditches statewide, except as otherwise designated: 2B, 3E, 4

13.10 All drainage canals and ditches statewide, except as otherwise designated: 2B, 3E

13.11 National Wildlife Refuges and State Waterfowl Management Areas, and other Areas Associated with the Great Salt Lake

TABLE

Bear River National Wildlife Refuge, Box Elder County	2B	3B	3D
Bear River Bay Open Water below approximately 4,208 ft.			5C
Transitional Waters approximately 4,208 ft. to Open Water			5E
Open Water above approximately 4,208 ft.	2B	3B	3D
Brown's Park Waterfowl Management Area, Daggett County	2B 3A		3D
Clear Lake Waterfowl Management Area, Millard County	2B		3C 3D
Desert Lake Waterfowl Management Area, Emery County	2B		3C 3D
Farmington Bay Waterfowl Management Area, Davis and Salt Lake Counties	2B		3C 3D
Farmington Bay Open Water below approximately 4,208 ft.			5D
Transitional Waters approximately 4,208 ft. to Open Water			5E
Open Water above approximately 4,208 ft.	2B	3B	3D
Fish Springs National Wildlife Refuge, Juab County	2B		3C 3D
Harold Crane Waterfowl Management Area, Box Elder County	2B		3C 3D
Gilbert Bay Open Water below approximately 4,208 ft.			5A
Transitional Waters approximately 4,208 ft. to Open Water			5E
Open Water above approximately 4,208 ft.	2B	3B	3D
Gunnison Bay Open Water below approximately 4,208 ft.			5B
Transitional Waters approximately 4,208 ft. to Open Water			5E
Open Water above approximately 4,208 ft.	2B	3B	3D
Howard Slough Waterfowl Management Area, Weber County	2B		3C 3D
Locomotive Springs Waterfowl Management Area, Box Elder County	2B	3B	3D
Ogden Bay Waterfowl Management Area, Weber County	2B		3C 3D
Ouray National Wildlife Refuge, Uintah County	2B	3B	3D

Powell Slough Waterfowl Management Area, Utah County	2B	3C 3D		
Public Shooting Grounds Waterfowl Management Area, Box Elder County	2B	3C 3D		
Salt Creek Waterfowl Management Area, Box Elder County	2B	3C 3D		
Stewart Lake Waterfowl Management Area, Uintah County	2B	3B 3D		
Timpie Springs Waterfowl Management Area, Tooele County	2B	3B 3D		

portion)	1C 2A	3A	4
Long Park Reservoir	1C	2B 3A	4
Sheep Creek Reservoir		2B 3A	4
Spirit Lake		2B 3A	4
Upper Potter Lake		2B 3A	4

f. Davis County

TABLE

Farmington Ponds		2B 3A	4
Kaysville Highway Ponds		2B 3A	4
Holmes Creek Reservoir		2B 3B	4

13.12 Lakes and Reservoirs. All lakes and any reservoirs greater than 10 acres not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

a. Beaver County

TABLE

Anderson Meadow Reservoir	2B 3A		4
Manderfield Reservoir	2B 3A		4
LaBaron Reservoir	2B 3A		4
Kent's Lake	2B 3A		4
Minersville Reservoir	2B 3A	3D	4
Puffer Lake	2B 3A		
Three Creeks Reservoir	2B 3A		4

b. Box Elder County

TABLE

Cutler Reservoir (including portion in Cache County)	2B 3B	3D	4
Etna Reservoir	2B 3A		4
Lynn Reservoir	2B 3A		4
Mantua Reservoir	2B 3A		4
Willard Bay Reservoir	1C 2A	3B 3D	4

c. Cache County

TABLE

Hyrum Reservoir	2A 3A		4
Newton Reservoir	2B 3A		4
Porcupine Reservoir	2B 3A		4
Pelican Pond	2B 3B		4
Tony Grove Lake	2B 3A		4

d. Carbon County

TABLE

Grassy Trail Creek Reservoir	1C	2B 3A	4
Olsen Pond		2B 3B	4
Scofield Reservoir	1C	2B 3A	4

e. Daggett County

TABLE

Browne Reservoir	2B 3A		4
Daggett Lake	2B 3A		4
Flaming Gorge Reservoir (Utah			

TABLE

Allred Lake		2B 3A	4
Atwine Lake		2B 3A	4
Atwood Lake		2B 3A	4
Betsy Lake		2B 3A	4
Big Sandwash Reservoir	1C	2B 3A	4
Bluebell Lake		2B 3A	4
Brown Duck Reservoir		2B 3A	4
Butterfly Lake		2B 3A	4
Cedarview Reservoir		2B 3A	4
Chain Lake #1		2B 3A	4
Chepeta Lake		2B 3A	4
Clements Reservoir		2B 3A	4
Cleveland Lake		2B 3A	4
Cliff Lake		2B 3A	4
Continent Lake		2B 3A	4
Crater Lake		2B 3A	4
Crescent Lake		2B 3A	4
Daynes Lake		2B 3A	4
Dean Lake		2B 3A	4
Doll Lake		2B 3A	4
Drift Lake		2B 3A	4
Elbow Lake		2B 3A	4
Farmer's Lake		2B 3A	4
Fern Lake		2B 3A	4
Fish Hatchery Lake		2B 3A	4
Five Point Reservoir		2B 3A	4
Fox Lake Reservoir		2B 3A	4
Governor's Lake		2B 3A	4
Granddaddy Lake		2B 3A	4
Hoover Lake		2B 3A	4
Island Lake		2B 3A	4
Jean Lake		2B 3A	4

g. Duchesne County

Jordan Lake	2B 3A	4	TABLE		
Kidney Lake	2B 3A	4	Barney Lake	2B 3A	4
Kidney Lake West	2B 3A	4	Cyclone Lake	2B 3A	4
Lily Lake	2B 3A	4	Deer Lake	2B 3A	4
Midview Reservoir (Lake Boreham)	2B 3B	4	Jacob's Valley Reservoir	2B 3C 3D	4
Milk Reservoir	2B 3A	4	Lower Bowns Reservoir	2B 3A	4
Mirror Lake	2B 3A	4	North Creek Reservoir	2B 3A	4
Mohawk Lake	2B 3A	4	Panguitch Lake	2B 3A	4
Moon Lake	1C 2A 3A	4	Pine Lake	2B 3A	4
North Star Lake	2B 3A	4	Oak Creek Reservoir (Upper Bowns)	2B 3A	4
Palisade Lake	2B 3A	4	Pleasant Lake	2B 3A	4
Pine Island Lake	2B 3A	4	Posey Lake	2B 3A	4
Pinto Lake	2B 3A	4	Purple Lake	2B 3A	4
Pole Creek Lake	2B 3A	4	Raft Lake	2B 3A	4
Potter's Lake	2B 3A	4	Row Lake #3	2B 3A	4
Powell Lake	2B 3A	4	Row Lake #7	2B 3A	4
Pyramid Lake	2A 3A	4	Spectacle Reservoir	2B 3A	4
Queant Lake	2B 3A	4	Tropic Reservoir	2B 3A	4
Rainbow Lake	2B 3A	4	West Deer Lake	2B 3A	4
Red Creek Reservoir	2B 3A	4	Wide Hollow Reservoir	2B 3A	4
Rudolph Lake	2B 3A	4	j. Iron County		
Scout Lake	2A 3A	4	TABLE		
Spider Lake	2B 3A	4	Newcastle Reservoir	2B 3A	4
Spirit Lake	2B 3A	4	Red Creek Reservoir	2B 3A	4
Starvation Reservoir	1C 2A 3A	4	Yankee Meadow Reservoir	2B 3A	4
Superior Lake	2B 3A	4	k. Juab County		
Swasey Hole Reservoir	2B 3A	4	TABLE		
Taylor Lake	2B 3A	4	Chicken Creek Reservoir	2B 3C 3D	4
Thompson Lake	2B 3A	4	Mona Reservoir	2B 3B	4
Timothy Reservoir #1	2B 3A	4	Sevier Bridge (Yuba) Reservoir	2A 3B	4
Timothy Reservoir #6	2B 3A	4	l. Kane County		
Timothy Reservoir #7	2B 3A	4	TABLE		
Twin Pots Reservoir	1C 2B 3A	4	Navajo Lake	2B 3A	4
Upper Stillwater Reservoir	1C 2B 3A	4	m. Millard County		
X - 24 Lake	2B 3A	4	TABLE		
h. Emery County			DMAD Reservoir	2B 3B	4
TABLE			Fools Creek Reservoir	2B 3C 3D	4
Cleveland Reservoir	2B 3A	4	Garrison Reservoir (Pruess Lake)	2B 3B	4
Electric Lake	2B 3A	4	Gunnison Bend Reservoir	2B 3B	4
Huntington Reservoir	2B 3A	4	n. Morgan County		
Huntington North Reservoir	2A 3B	4	TABLE		
Joe's Valley Reservoir	2A 3A	4	East Canyon Reservoir	1C 2A 3A	4
Millsite Reservoir	1C 2A 3A	4	Lost Creek Reservoir	1C 2B 3A	4
i. Garfield County					

o. Piute County

TABLE				
Barney Reservoir		2B 3A		4
Lower Boxcreek Reservoir		2B 3A		4
Manning Meadow Reservoir		2B 3A		4
Otter Creek Reservoir		2B 3A		4
Piute Reservoir		2B 3A		4
Upper Boxcreek Reservoir		2B 3A		4

p. Rich County

TABLE				
Bear Lake (Utah portion)		2A 3A		4
Birch Creek Reservoir		2B 3A		4
Little Creek Reservoir		2B 3A		4
Woodruff Creek Reservoir		2B 3A		4

q. Salt Lake County

TABLE				
Decker Lake		2B 3B 3D		4
Lake Mary	1C	2B 3A		
Little Dell Reservoir	1C	2B 3A		
Mountain Dell Reservoir	1C	2B 3A		

r. San Juan County

TABLE				
Blanding Reservoir #4	1C	2B 3A		4
Dark Canyon Lake	1C	2B 3A		4
Ken's Lake		2B 3A**		4
Lake Powell (Utah portion)	1C 2A		3B	4
Lloyd's Lake	1C	2B 3A		4
Monticello Lake		2B 3A		4
Recapture Reservoir		2B 3A		4

s. Sanpete County

TABLE				
Duck Fork Reservoir		2B 3A		4
Fairview Lakes	1C	2B 3A		4
Ferron Reservoir		2B 3A		4
Lower Gooseberry Reservoir	1C	2B 3A		4
Gunnison Reservoir		2B	3C	4
Island Lake		2B 3A		4
Miller Flat Reservoir		2B 3A		4
Ninemile Reservoir		2B 3A		4
Palisade Reservoir		2A 3A		4
Rolfson Reservoir		2B	3C	4
Twin Lakes		2B 3A		4
Willow Lake		2B 3A		4

t. Sevier County

TABLE				
Annabella Reservoir		2B 3A		4
Big Lake		2B 3A		4
Farnsworth Lake		2B 3A		4
Fish Lake		2B 3A		4
Forsythe Reservoir		2B 3A		4
Johnson Valley Reservoir		2B 3A		4
Koosharem Reservoir		2B 3A		4
Lost Creek Reservoir		2B 3A		4
Redmond Lake		2B 3B		4
Rex Reservoir		2B 3A		4
Salina Reservoir		2B 3A		4
Sheep Valley Reservoir		2B 3A		4

u. Summit County

TABLE				
Abes Lake		2B 3A		4
Alexander Lake		2B 3A		4
Amethyst Lake		2B 3A		4
Beaver Lake		2B 3A		4
Beaver Meadow Reservoir		2B 3A		4
Big Elk Reservoir		2B 3A		4
Blanchard Lake		2B 3A		4
Bridger Lake		2B 3A		4
China Lake		2B 3A		4
Cliff Lake		2B 3A		4
Clyde Lake		2B 3A		4
Coffin Lake		2B 3A		4
Cuberant Lake		2B 3A		4
East Red Castle Lake		2B 3A		4
Echo Reservoir		1C 2A 3A		4
Fish Lake		2B 3A		4
Fish Reservoir		2B 3A		4
Haystack Reservoir #1		2B 3A		4
Henry's Fork Reservoir		2B 3A		4
Hoop Lake		2B 3A		4
Island Lake		2B 3A		4
Island Reservoir		2B 3A		4
Jesson Lake		2B 3A		4
Kamas Lake		2B 3A		4
Lily Lake		2B 3A		4
Lost Reservoir		2B 3A		4
Lower Red Castle Lake		2B 3A		4
Lyman Lake		2A 3A		4

Marsh Lake	2B 3A	4
Marshall Lake	2B 3A	4
McPheters Lake	2B 3A	4
Meadow Reservoir	2B 3A	4
Meeks Cabin Reservoir	2B 3A	4
Notch Mountain Reservoir	2B 3A	4
Red Castle Lake	2B 3A	4
Rockport Reservoir	1C 2A 3A	4
Ryder Lake	2B 3A	4
Sand Reservoir	2B 3A	4
Scow Lake	2B 3A	4
Smith Moorehouse Reservoir	1C 2B 3A	4
Star Lake	2B 3A	4
Stateline Reservoir	2B 3A	4
Tamarack Lake	2B 3A	4
Trial Lake	1C 2B 3A	4
Upper Lyman Lake	2B 3A	4
Upper Red Castle	2B 3A	4
Wall Lake Reservoir	2B 3A	4
Washington Reservoir	2B 3A	4
Whitney Reservoir	2B 3A	4

v. Tooele County

TABLE

Blue Lake	2B 3B	4
Clear Lake	2B 3B	4
Grantsville Reservoir	2B 3A	4
Horseshoe Lake	2B 3B	4
Kanaka Lake	2B 3B	4
Rush Lake	2B 3B	4
Settlement Canyon Reservoir	2B 3A	4
Stansbury Lake	2B 3B	4
Vernon Reservoir	2B 3A	4

w. Uintah County

TABLE

Ashley Twin Lakes (Ashley Creek)	1C 2B 3A	4
Bottle Hollow Reservoir	2B 3A	4
Brough Reservoir	2B 3A	4
Calder Reservoir	2B 3A	4
Crouse Reservoir	2B 3A	4
East Park Reservoir	2B 3A	4
Fish Lake	2B 3A	4
Goose Lake #2	2B 3A	4
Matt Warner Reservoir	2B 3A	4
Oaks Park Reservoir	2B 3A	4

Paradise Park Reservoir	2B 3A	4
Pelican Lake	2B 3B	4
Red Fleet Reservoir	1C 2A 3A	4
Steinaker Reservoir	1C 2A 3A	4
Towave Reservoir	2B 3A	4
Weaver Reservoir	2B 3A	4
Whiterocks Lake	2B 3A	4
Workman Lake	2B 3A	4

x. Utah County

TABLE

Big East Lake	2B 3A	4
Salem Pond	2A 3A	4
Silver Flat Lake Reservoir	2B 3A	4
Tibble Fork Reservoir	2B 3A	4
Utah Lake	2B 3B 3D	4

y. Wasatch County

TABLE

Currant Creek Reservoir	1C 2B 3A	4
Deer Creek Reservoir	1C 2A 3A	4
Jordanelle Reservoir	1C 2A 3A	4
Mill Hollow Reservoir	2B 3A	4
Strawberry Reservoir	1C 2B 3A	4

z. Washington County

TABLE

Baker Dam Reservoir	2B 3A	4
Gunlock Reservoir	1C 2A 3B	4
Ivins Reservoir	2B 3B	4
Kolob Reservoir	2B 3A	4
Lower Enterprise Reservoir	2B 3A	4
Quail Creek Reservoir	1C 2A 3B	4
Sand Hollow Reservoir	1C 2A 3B	4
Upper Enterprise Reservoir	2B 3A	4

aa. Wayne County

TABLE

Blind Lake	2B 3A	4
Cook Lake	2B 3A	4
Donkey Reservoir	2B 3A	4
Fish Creek Reservoir	2B 3A	4
Mill Meadow Reservoir	2B 3A	4
Raft Lake	2B 3A	4

bb. Weber County

TABLE

Causey Reservoir	2B 3A	4
Pineview Reservoir	1C 2A 3A	4

** Denotes site-specific temperature, see Table 2.14.2 Notes

13.13 Unclassified Waters

All waters not specifically classified are presumptively classified: 2B, 3D

12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC,
RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source	Recreation and Aesthetics		Agri-culture
	1C	2A	2B	4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML (7)				
E. coli	206	126	206	
MAXIMUM (NO.)/100 ML (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
INORGANICS (MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride (3)	1.4-2.4			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
RADIOLOGICAL (MAXIMUM pCi/L)				
Gross Alpha	15			15
Gross Beta (Combined)	4 mrem/yr		Radium 226, 228	
Strontium 90	8			
Tritium	20000			
Uranium	30			
ORGANICS (MAXIMUM UG/L)				
Chlorophenoxy Herbicides				
2,4-D	70			
2,4,5-TP	10			
Methoxychlor	40			
POLLUTION INDICATORS (5)				
BOD (MG/L)		5	5	5
Nitrate as N (MG/L)		4	4	
Total Phosphorus as P (MG/L) (6)		0.05	0.05	
FOOTNOTES:				
(1) Reserved				
(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.				
(3) Maximum concentration varies according to the daily maximum mean air temperature.				
TEMP (C)	MG/L			

(4) SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to U10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion: 1,700 mg/l

Quitchupah Creek from the confluence with Ivie Creek to U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to US 89 1,450 mg/l (Apr.-Sept.) 1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable

basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE(8)

Parameter	Aquatic Wildlife 3A	3B	3C	3D	5
PHYSICAL					
Total Dissolved Gases	(1)	(1)			
Minimum Dissolved Oxygen (MG/L) (2)(2a)					
30 Day Average	6.5	5.5	5.0	5.0	
7 Day Average	9.5/5.0	6.0/4.0			
Minimum	8.0/4.0	5.0/3.0	3.0	3.0	
Max. Temperature(C)(3)	20	27	27		
Max. Temperature Change (C)(3)	2	4	4		
pH (Range)(2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0	
Turbidity Increase (NTU)	10	10	15	15	
METALS (4) (DISSOLVED, UG/L)(5)					
Aluminum					
4 Day Average (6)	87	87	87	87	
1 Hour Average	750	750	750	750	
Arsenic (Trivalent)					
4 Day Average	150	150	150	150	
1 Hour Average	340	340	340	340	
Cadmium (7)					
4 Day Average	0.25	0.25	0.25	0.25	
1 Hour Average	2.0	2.0	2.0	2.0	
Chromium (Hexavalent)					
4 Day Average	11	11	11	11	
1 Hour Average	16	16	16	16	
Chromium (Trivalent) (7)					
4 Day Average	74	74	74	74	
1 Hour Average	570	570	570	570	
Copper (7)					
4 Day Average	9	9	9	9	
1 Hour Average	13	13	13	13	
Cyanide (Free)					
4 Day Average	5.2	5.2	5.2		
1 Hour Average	22	22	22	22	
Iron (Maximum)	1000	1000	1000	1000	
Lead (7)					
4 Day Average	2.5	2.5	2.5	2.5	
1 Hour Average	65	65	65	65	
Mercury					
4 Day Average	0.012	0.012	0.012	0.012	
Nickel (7)					
4 Day Average	52	52	52	52	
1 Hour Average	468	468	468	468	
Selenium					

4 Day Average	4.6	4.6	4.6	4.6
1 Hour Average	18.4	18.4	18.4	18.4
Selenium (14) Gilbert Bay (Class 5A) Great Salt Lake Geometric Mean over Nesting Season (mg/kg dry wt)				
				12.5
Silver				
1 Hour Average (7)	1.6	1.6	1.6	1.6
Tributyltin				
4 Day Average	0.072	0.072	0.072	0.072
1 Hour Average	0.46	0.46	0.46	0.46
Zinc (7)				
4 Day Average	120	120	120	120
1 Hour Average	120	120	120	120
INORGANICS (MG/L) (4)				
Total Ammonia as N (9)				
30 Day Average	(9a)	(9a)	(9a)	(9a)
1 Hour Average	(9b)	(9b)	(9b)	(9b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	0.011
1 Hour Average	0.019	0.019	0.019	0.019
Hydrogen Sulfide (13) (Undissociated, Max. UG/L)				
	2.0	2.0	2.0	2.0
Phenol(Maximum)	0.01	0.01	0.01	0.01
RADIOLOGICAL (MAXIMUM pCi/L)				
Gross Alpha (10)	15	15	15	15
ORGANICS (UG/L) (4)				
Acrolein				
4 Day Average	3.0	3.0	3.0	3.0
1 Hour Average	3.0	3.0	3.0	3.0
Aldrin				
1 Hour Average	1.5	1.5	1.5	1.5
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
Chlorpyrifos				
4 Day Average	0.041	0.041	0.041	0.041
1 Hour Average	0.083	0.083	0.083	0.083
4,4' -DDT				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Hour Average	0.55	0.55	0.55	0.55
Diazinon				
4 Day Average	0.17	0.17	0.17	0.17
1 Hour Average	0.17	0.17	0.17	0.17
Dieldrin				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.24	0.24	0.24	0.24
Alpha-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
beta-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Day Average	0.11	0.11	0.11	0.11
Endrin				
4 Day Average	0.036	0.036	0.036	0.036
1 Hour Average	0.086	0.086	0.086	0.086
Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Heptachlor epoxide				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0

Methoxychlor (Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
Nonylphenol 4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion 4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCB's 4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11) 4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene 4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION INDICATORS (11)				
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P(MG/L) (12)	0.05	0.05		

FOOTNOTES:

- (1) Not to exceed 110% of saturation.
- (2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.
- (2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses. To ensure protection of uses, the Director shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Director will inform the Water Quality Board of any protocols or guidelines that are developed.
- (3) Site Specific Standards for Temperature
Ken's Lake: From June 1st - September 20th, 27 degrees C.
- (4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.
- (5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by EPA approved laboratory methods for the required detection levels.
- (6) The criterion for aluminum will be implemented as follows:
Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).
- (7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.
- (8) Reserved
- (9) The following equations are used to calculate Ammonia criteria concentrations:
(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.
Fish Early Life Stages are Present:
$$\text{mg/l as N (Chronic)} = ((0.0577 / (1 + 10^{7.688 - \text{pH}})) + (2.487 / (1 + 10^{\text{pH} - 7.688}))) * \text{MIN}(2.85, 1.45 * 10^{0.028 * (25 - \text{T})})$$

Fish Early Life Stages are Absent:
$$\text{mg/l as N (Chronic)} = ((0.0577 / (1 + 10^{7.688 - \text{pH}})) + (2.487 / (1 + 10^{\text{pH} - 7.688}))) * 1.45 * 10^{0.028 * (25 - \text{MAX}(T, 7))}$$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every

three years on the average the acute criterion calculated using the following equations.
Class 3A:
$$\text{mg/l as N (Acute)} = (0.275 / (1 + 10^{7.204 - \text{pH}})) + (39.0 / (1 + 10^{\text{pH} - 7.204}))$$

Class 3B, 3C, 3D:
$$\text{mg/l as N (Acute)} = 0.411 / (1 + 10^{7.204 - \text{pH}}) + (58.4 / (1 + 10^{\text{pH} - 7.204}))$$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion. The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Director, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The Director will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

- (10) Investigation should be conducted to develop more information where these levels are exceeded.
- (11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.
- (12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.
- (13) Formula to convert dissolved sulfide to un-disassociated hydrogen sulfide is:
$$\text{H}_2\text{S} = \text{Dissolved Sulfide} * e^{(-1.92 + \text{pH}) + 12.05}$$
- (14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:

Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.

Antidegradation
Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

TABLE
1-HOUR AVERAGE (ACUTE) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/L)

pH	Class 3A	Class 3B, 3C, 3D
6.5	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.6
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0
7.7	9.65	14.4
7.8	8.11	12.1
7.9	6.77	10.1
8.0	5.62	8.40
8.1	4.64	6.95
8.2	3.83	5.72
8.3	3.15	4.71

8.4	2.59	3.88
8.5	2.14	3.20
8.6	1.77	2.65
8.7	1.47	2.20
8.8	1.23	1.84
8.9	1.04	1.56
9.0	0.89	1.32

7.5	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	0.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	0.68	1.47	1.29	1.14	1.00	0.879	0.733
8.2	0.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	0.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	0.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.735	0.646	0.568	0.499	0.439	0.396	0.339
8.7	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.389	0.342	0.300	0.264	0.232	0.204	0.179

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/L)

pH	Fish Early Life Stages Present Temperature, C									
	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.90
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.88	0.77
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.97	0.86	0.75	0.66
8.3	1.52	1.52	1.39	1.22	1.07	0.94	0.83	0.73	0.64	0.56
8.4	1.29	1.29	1.17	1.03	0.91	0.80	0.70	0.62	0.54	0.48
8.5	1.09	1.09	0.99	0.87	0.76	0.67	0.59	0.52	0.46	0.40
8.6	0.92	0.92	0.84	0.73	0.65	0.57	0.50	0.44	0.39	0.34
8.7	0.78	0.78	0.71	0.62	0.55	0.48	0.42	0.37	0.33	0.29
8.8	0.66	0.66	0.60	0.53	0.46	0.41	0.36	0.32	0.28	0.24
8.9	0.56	0.56	0.51	0.45	0.40	0.35	0.31	0.27	0.24	0.21
9.0	0.49	0.49	0.44	0.39	0.34	0.30	0.26	0.23	0.20	0.18

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/L)

pH	Fish Early Life Stages Absent Temperature, C									
	0-7	8	9	10	11	12	13	14	16	
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.36	6.89	6.06	
6.6	10.7	10.1	9.37	8.79	8.24	7.72	7.24	6.36		
6.7	10.5	9.99	9.20	8.62	8.08	7.58	7.11	6.66	5.86	
6.8	10.2	9.81	8.98	8.42	7.90	7.40	6.94	6.51	5.72	
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.56	
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.37	
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.15	
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	4.90	
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.61	
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.30	
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	3.97	
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.61	
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.25	
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	2.89	
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.54	
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.21	
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	1.91	
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.63	
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.39	
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.17	
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	0.990	
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.836	
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.707	
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.601	
8.9	0.917	0.860	0.806	0.758	0.709	0.664	0.623	0.584	0.513	
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.442	

pH	18	20	22	24	26	28	30
6.5	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	4.41	3.78	3.33	2.92	2.57	2.26	1.99
7.3	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	3.78	3.32	2.92	2.57	2.26	1.98	1.74

TABLE 2.14.3a

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD
WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD
BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	4-Day Average (Chronic) Concentration (UG/L)
CADMIUM	$CF * e^{(0.7409(\ln(\text{hardness})) - 4.719)}$ $CF = 1.101672 - \ln(\text{hardness}) (0.041838)$
CHROMIUM III	$CF * e^{(0.8190(\ln(\text{hardness})) + 0.6848)}$ $CF = 0.860$
COPPER	$CF * e^{(0.8545(\ln(\text{hardness})) - 1.702)}$ $CF = 0.960$
LEAD	$CF * e^{(1.273(\ln(\text{hardness})) - 4.705)}$ $CF = 1.46203 - \ln(\text{hardness}) (0.145712)$
NICKEL	$CF * e^{(0.8460(\ln(\text{hardness})) + 0.0584)}$ $CF = 0.997$
SILVER	N/A
ZINC	$CF * e^{(0.8473(\ln(\text{hardness})) + 0.884)}$ $CF = 0.986$

TABLE 2.14.3b

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD
WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD
BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	1-Hour Average (Acute) Concentration (UG/L)
CADMIUM	$CF * e^{(1.0166(\ln(\text{hardness})) - 3.924)}$ $CF = 1.136672 - \ln(\text{hardness}) (0.041838)$
CHROMIUM (III)	$CF * e^{(0.8190(\ln(\text{hardness})) + 3.7256)}$ $CF = 0.316$
COPPER	$CF * e^{(0.9422(\ln(\text{hardness})) - 1.700)}$ $CF = 0.960$
LEAD	$CF * e^{(1.273(\ln(\text{hardness})) - 1.460)}$ $CF = 1.46203 - \ln(\text{hardness}) (0.145712)$
NICKEL	$CF * e^{(0.8460(\ln(\text{hardness})) + 2.255)}$ $CF = 0.998$
SILVER	$CF * e^{(1.72(\ln(\text{hardness})) - 6.59)}$ $CF = 0.85$
ZINC	$CF * e^{(0.8473(\ln(\text{hardness})) + 0.884)}$ $CF = 0.978$

FOOTNOTE:
(1) Hardness as mg/l CaCO₃.

TABLE 2.14.4
EQUATIONS FOR PENTACHLOROPHENOL
(pH DEPENDENT)

4-Day Average (Chronic) Concentration (UG/L)	1-Hour Average (Acute) Concentration (UG/L)
$e^{(1.005(\text{pH})) - 5.134}$	$e^{(1.005(\text{pH})) - 4.869}$

TABLE 2.14.5
SITE SPECIFIC CRITERIA FOR
DISSOLVED OXYGEN FOR JORDAN RIVER, SURPLUS CANAL, AND STATE CANAL
(SEE SECTION 2.13)

DISSOLVED OXYGEN:	
May-July	
7-day average	5.5 mg/l
30-day average	5.5 mg/l
Instantaneous minimum	4.5 mg/l
August-April	
30-day average	5.5 mg/l
Instantaneous minimum	4.0 mg/l

TABLE 2.14.6
LIST OF HUMAN HEALTH CRITERIA (CONSUMPTION)

Chemical Parameter	Water and Organism	
	(ug/L) Class 1C	Organism Only (ug/L) Class 3A,3B,3C,3D
Antimony	5.6	640
Arsenic	A	A
Beryllium	C	C
Cadmium	C	C
Chromium III	C	C
Chromium VI	C	C
Copper	1,300	
Lead	C	C
Mercury	A	A
Nickel	100 MCL	4,600
Selenium	A	4,200
Thallium	0.24	0.47
Zinc	7,400	26,000
Cyanide	140	140
Asbestos	7 million Fibers/L	
2,3,7,8-TCDD Dioxin	5.0 E -9 B	5.1 E-9 B
Acrolein	6.0	9.0
Acrylonitrile	0.051 B	0.25 B
Alachlor	2.0	
Atrazine	3.0	
Benzene	2.2 B	51 B
Bromoform	4.3 B	140 B
Carbofuran	40	
Carbon Tetrachloride	0.23 B	1.6 B
Chlorobenzene	100 MCL	1,600
Chlorodibromomethane	0.40 B	13 B
Chloroethane		
2-Chloroethylvinyl Ether		
Chloroform	5.7 B	470 B
Dalapon	200	
Di(2ethylhexyl)adipate	400	
Dibromochloropropane	0.2	
Dichlorobromomethane	0.55 B	17 B
1,1-Dichloroethane		
1,2-Dichloroethane	0.38 B	37 B
1,1-Dichloroethylene	7 MCL	7,100
Dichloroethylene (cis-1,2)	70	
Dinoseb	7.0	
Diquat	20	
1,2-Dichloropropane	0.50 B	15 B
1,3-Dichloropropene	0.34	21
Endothall	100	
Ethylbenzene	530	2,100
Ethylene Dibromide	0.05	
Glyphosate	700	
Haloacetic acids	60 E	
Methyl Bromide	47	1,500
Methyl Chloride	F	F
Methylene Chloride	4.6 B	590 B
Ocaml (vidate)	200	
Picloram	500	
Simazine	4	
Styrene	100	
1,1,2,2-Tetrachloroethane	0.17 B	4.0 B
Tetrachloroethylene	0.69 B	3.3 B
Toluene	1,000	15,000
1,2 -Trans-Dichloroethylene	100 MCL	10,000
1,1,1-Trichloroethane	200 MCL	F
1,1,2-Trichloroethane	0.59 B	16 B
Trichloroethylene	2.5 B	30 B
Vinyl Chloride	0.025	2.4
Xylenes	10,000	
2-Chlorophenol	81	150
2,4-Dichlorophenol	77	290

2,4-Dimethylphenol	380	850
2-Methyl-4,6-Dinitrophenol	13.0	280
2,4-Dinitrophenol	69	5,300
2-Nitrophenol		
4-Nitrophenol		
3-Methyl-4-Chlorophenol		
Penetachlorophenol	0.27 B	3.0 B
Phenol	10,000	860,000
2,4,6-Trichlorophenol	1.4 B	2.4 B
Acenaphthene	670	990
Acenaphthylene		
Anthracene	8,300	40,000
Benidine	0.000086 B	0.00020 B
BenzoAnthracene	0.0038 B	0.018 B
BenzoaPyrene	0.0038 B	0.018 B
BenzobFluoranthene	0.0038 B	0.018 B
BenzoghiPerylene		
BenzokFluoranthene	0.0038 B	0.018 B
Bis2-ChloroethoxyMethane		
Bis2-ChloroethylEther	0.030 B	0.53 B
Bis2-ChloroisopropylEther	1,400	65,000
Bis2-EthylhexylPhthalate	1.2 B	2.2 B
4-Bromophenyl Phenyl Ether		
Butylbenzyl Phthalate	1,500	1,900
2-Chloronaphthalene	1,000	1,600
4-Chlorophenyl Phenyl Ether		
Chrysene	0.0038 B	0.018 B
Dibenzoa,hAnthracene	0.0038 B	0.018 B
1,2-Dichlorobenzene	420	1,300
1,3-Dichlorobenzene	320	960
1,4-Dichlorobenzene	63	190
3,3-Dichlorobenzidine	0.021 B	0.028 B
Diethyl Phthalate	17,000	44,000
Dimethyl Phthalate	270,000	1,100,000
Di-n-Butyl Phthalate	2,000	4,500
2,4-Dinitrotoluene	0.11 B	3.4 B
2,6-Dinitrotoluene		
Di-n-Octyl Phthalate		
1,2-Diphenylhydrazine	0.036 B	0.20 B
Fluoranthene	130	140
Fluorene	1,100	5,300
Hexachlorobenzene	0.00028 B	0.00029 B
Hexachlorobutidine	0.44 B	18 B
Hexachloroethane	1.4 B	3.3 B
Hexachlorocyclopentadiene	40	1,100
Ideno 1,2,3-cdPyrene	0.0038 B	0.018 B
Isophorone	35 B	960 B
Naphthalene		
Nitrobenzene	17	690
N-Nitrosodimethylamine	0.00069 B	3.0 B
N-Nitrosodi-n-Propylamine	0.005 B	0.51 B
N-Nitrosodiphenylamine	3.3 B	6.0 B
PhenanthrenePyrene	830	4,000
1,2,4-Trichlorobenzene	35	70
Aldrin	0.000049 B	0.000050 B
alpha-BHC	0.0026 B	0.0049 B
beta-BHC	0.0091 B	0.017 B
gamma-BHC (Lindane)	0.2 MCL	1.8
delta-BHC		
Chlordane	0.00080 B	0.00081 B
4,4-DDT	0.00022 B	0.00022 B
4,4-DDE	0.00022 B	0.00022 B
4,4-DDD	0.00031 B	0.00031 B
Dieldrin	0.000052 B	0.000054 B
alpha-Endosulfan	62	89
beta-Endosulfan	62	89
Endosulfan Sulfate	62	89
Endrin	0.059	0.060
Endrin Aldehyde	0.29	0.30
Heptachlor	0.000079 B	0.000079 B
Heptachlor Epoxide	0.000039 B	0.000039 B
Polychlorinated Biphenyls	0.000064 B,D	0.000064 B,D
PCB's		
Toxaphene	0.00028 B	0.00028 B

Footnotes:
 A. See Table 2.14.2
 B. Based on carcinogenicity of 10-6 risk.
 C. EPA has not calculated a human criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics
 D. This standard applies to total PCBs.

**KEY: water pollution, water quality standards
 August 19, 2013
 Notice of Continuation October 2, 2012**

R317. Environmental Quality, Water Quality.**R317-4. Onsite Wastewater Systems.****R317-4-1. Authority, Purpose, Scope, and Administrative Requirements.**

1.1 Authorization.

These rules are administered by the division authorized by Title 19 Chapter 5.

1.2. Purpose.

The purpose of this rule is to protect the public health and environment from potential adverse effects from onsite wastewater disposal within the boundaries of Utah.

1.3. Scope.

This rule shall apply to onsite wastewater systems.

1.4. Jurisdiction.

Local health departments have jurisdiction to administer this rule. Nothing contained in this rule shall be construed to prevent local health departments from:

A. adopting stricter requirements than those contained herein;

B. issuing an operating permit at a frequency not exceeding once every five years with an inspection showing a satisfactory performance of the permitted system by the department's staff before renewal;

C. taking necessary steps for ground water quality protection:

1. through adoption of a ground water quality protection management policy based on a ground water management study; or

2. by an onsite wastewater systems management planning policy and land use planning through the county's agency;

D. prohibiting any alternative system within its jurisdiction;

E. assessing fees for administration of this rule;

F. requiring the onsite systems within its jurisdiction be placed under an umbrella of a:

1. responsible management entity overseen by the local health department;

2. contract service provider overseen by the local health department; or

3. management district body politic created by the county for the purpose of operation, maintenance, repairs and monitoring of alternative or all onsite wastewater systems;

G. requiring conventional and alternative systems to be serviced; and

H. receiving a request for a variance, conducting a review, and granting either an approval or denial.

1.5. Alternative System Administration.

Local health departments shall administer an alternative systems program.

A. The local board of health may restrict its administration of these systems by notifying the division that it is exempt from this requirement by:

1. adopting a resolution or regulation; or

2. presenting an ordinance.

B. An alternative systems program shall:

1. advise the owner of the:

a. type of alternative system;

b. information concerning risk of failure;

c. level of maintenance required;

d. financial liability for repair, modification or replacement of a failed system; and

e. periodic monitoring requirements;

2. ensure that a Notice of the existence of the alternative system is recorded in the chain of title for that property;

3. provide oversight of installed alternative systems;

4. inspect all installed alternative systems at frequency specified in this rule, through:

a. the department's staff;

b. contracted service providers;

c. responsible management entities;

d. a management district body politic created by the county for the purpose of managing onsite wastewater systems; or

e. any combination of the above options;

5. maintain records of all installed alternative systems, failures, modifications, repairs and all inspections, recording the condition of the system at the time of inspection, such as overflow, surfacing, ponding, and nuisance;

6. submit an annual report to the division on or before September 1 for the previous state of Utah fiscal year's activities showing:

a. the type and number of alternative systems approved, installed, modified, repaired, failed, and inspected;

b. a summary of enforcement actions taken, pending and resolved; and

c. a summary of performance of water quality data collected;

7. require all alternative systems to be inspected and serviced as detailed in Section R317-4-13 Table 7 and Section R317-4-11.

1.6. Variance Administration Authority.

The Water Quality Board delegates the authority to grant or deny variances to the design requirements provided for in this rule to the local health departments. The board may amend, suspend, or rescind this delegation of authority to a local health department if it is determined that the local health department is not accepting or conducting reviews as described in Section R317-4-12.

A. The local health department having jurisdiction shall accept applications for variance requests on lots that are deemed not feasible for permitting an onsite wastewater system. Upon completion of a review, the local health department will grant or deny a variance to this rule as outlined in Section R317-4-12. The local health department also will submit an annual report of completed variance determinations to the division.

B. If a local health department fails to evaluate variance requests according to Section R317-4-12, the director shall notify the local health department. The director on behalf of the board may thereafter amend, suspend, or rescind the delegation of variance authority to the local health department. The variance authority would then revert to the division, and requests will be reviewed as follows.

1. The director may appoint a variance advisory committee to consider variance requests and make recommendations to the director. Any such advisory committee shall include at least one representative from a local health department. The director may refer any variance request to the variance advisory committee.

2. Upon review of the recommendation submitted by the variance advisory committee, the director shall render a written determination of the requested variance. If no committee was appointed by the director, the director shall render a written determination. Written determinations must be given within 180 days of the receipt of a complete and technically adequate variance request.

3. The director's final written determination will be forwarded to the local health department that has jurisdiction. The local health department is not required to approve or deny an operating or construction permit based on the director's determination of a variance request.

R317-4-2. Definitions.

"Absorption area" means the entire area used for the subsurface treatment and dispersion of effluent by an absorption system.

"Absorption bed" means an absorption system consisting of large excavated areas utilizing drain media or chambers.

"Absorption system" means a covered system constructed

to receive and to disperse effluent, from gravity or a pump, in such a manner that the effluent is effectively filtered and retained below the ground surface.

"Absorption trench" means an absorption system consisting of a series of narrow excavated trenches utilizing drain media, chambers, or bundled synthetic aggregate units.

"Alternative onsite wastewater system" means an onsite wastewater system that is not a conventional onsite wastewater system.

"At-grade system" means an alternative onsite wastewater system where the bottom of the absorption system is placed at or below the elevation of the existing site grade, and the top of the distribution pipe is above the elevation of existing site grade, and the absorption system is contained within fill that extends above that grade.

"Barrier material" means an effective, pervious material such as an acceptable synthetic filter fabric, or a two-inch layer of compacted straw.

"Bedrock" means the rock, usually solid, that underlies soil or other unconsolidated, superficial material.

"Bedroom" means any portion of a dwelling that is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include a den, study, sewing room, or sleeping loft. Unfinished basements shall be counted as a minimum of one additional bedroom.

"Board" means the Utah Water Quality Board.

"Body politic" means the state or its agencies or any political subdivision of the state to include a county, city, town, improvement district, taxing district or other governmental subdivision or public corporation of the state.

"Building sewer" means the pipe that carries wastewater from the building to a public sewer, an onsite wastewater system or other point of dispersal. It is synonymous with "house sewer".

"Bundled synthetic aggregate trench" means an absorption trench utilizing bundled synthetic aggregate units.

"Bundled synthetic aggregate unit" means a cylindrically shaped manufactured unit of synthetic aggregate enclosed in polyolefin netting, which may contain a perforated pipe.

"Chamber" means an open bottom, chambered structure of an approved material and design.

"Chambered trench" means an absorption trench utilizing chambers.

"Cleanout" means a device designed to provide access for removal of deposited or accumulated materials, generally from a pipe.

"Closed loop distribution" means a distribution method where the absorption system layout has the inlet and outlet ends of each lateral connected creating a complete and continuous pathway for effluent flow.

"Coarse drain media" means drain media ranging from 3/4 to 12 inches in diameter.

"Condominium" means the ownership of a single unit in a multi-unit project together with an undivided interest in common, in the common areas and facilities of the property.

"Connecting trench" means an absorption trench that is used to connect other absorption trenches, is less than 20 feet in length, and may be used to calculate total required absorption area.

"Construction permit" means the permit that authorizes an onsite wastewater system to be installed according to an approved design. An additional construction permit may also authorize activities associated with the repair or alteration of a malfunctioning or failing system.

"Conventional onsite wastewater system" means an onsite wastewater system typically consisting of a building sewer, a septic tank, and an absorption system utilizing absorption trenches, absorption beds, deep wall trenches, or seepage pits.

"Cover" means soils used to overlay the absorption area

that is free of large stones 10 inches diameter or larger, frozen clumps of earth, masonry, stumps, or waste construction material, or other materials that could damage the system.

"Curtain drain" means any ground water interceptor or drainage system that is backfilled with gravel or other suitable material and is intended to interrupt or divert the course of shallow ground water or surface water away from the onsite wastewater system.

"Designer" means a person who fulfills the requirements of Rule R317-11.

"Deep wall trench" means an absorption system consisting of deep excavated trenches utilizing coarse drain media, with a minimum sidewall absorption depth of 24 inches of suitable soil formation below the distribution pipe.

"Director" means the director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the Division of Radiation Control, the director of the Division of Radiation Control.

"Distribution box" means a watertight structure that receives effluent and distributes it concurrently, in essentially equal portions, into two or more pipes leading to an absorption system.

"Distribution pipe" means an approved pipe, solid or perforated, used in the dispersion of effluent in an absorption system.

"Diversion valve" means a watertight structure that receives effluent through one inlet and distributes it to two or more outlets, only one of which is used at a time.

"Division" means the Utah Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, excluding non-domestic wastewater. It is synonymous with the term "sewage".

"Drain media" means media used in an absorption system. It shall consist of stone, crushed stone, or gravel, ranging from 3/4 to 2-1/2 inches in diameter. It shall be free from fines, dust, sand or organic material and shall be durable and inert so that it will maintain its integrity, will not collapse or disintegrate with time. The maximum fines in the media shall be 2% by weight passing through a US Standard #10 mesh or 2 millimeter sieve. It shall be protected by a barrier material.

"Drainage system" means all the piping within public or private premises that conveys sewage or other liquid wastes to a legal point of treatment and dispersal, but does not include the mains of a public sewer system or a public sewage treatment or disposal plant.

"Drop box" means a watertight structure that receives septic tank effluent and distributes it into one or more distribution pipes, and into an overflow leading to another drop box and absorption system located at a lower elevation.

"Dry wash" means the dry bed of an ephemeral stream that flows only after heavy rains and is often found at the bottom of a canyon.

"Dwelling" means any structure, building, or any portion thereof that is used, intended, or designed to be occupied for human living purposes including houses, mobile homes, hotels, motels, and apartments.

"Effluent" means the liquid discharge from any treatment unit including a septic tank.

"Effluent pump" means a pump used to lift effluent.

"Effluent sewer" means solid pipe that carries effluent to the absorption system.

"Ejector pump" means a device to elevate or pump sewage to a septic tank, public sewer, or other means of disposal.

"Ephemeral stream" means a stream that flows for a small period of time, a week or less, after a precipitation event.

"Excessively permeable soil" means soils having an excessively high permeability, such as cobbles or gravels with

little fines and large voids, and having a percolation rate faster than 1 minute per inch.

"Experimental onsite wastewater system" means an onsite wastewater treatment and absorption system that is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptance.

"Filter fabric" means a synthetic, non-degradable woven or spun-bonded sheet material that has adequate tensile strength to prevent ripping during installation and backfilling, adequate permeability to allow free passage of water and gases; and adequate particle retention to prevent downward migration of soil particles into the absorption system. The minimum physical properties for the fabric shall be 4.0 ounces per square yard or equivalent.

"Ground water" means that portion of subsurface water that is in the zone of soil saturation.

"Ground water table" means the surface of a body of unconfined ground water in which the pressure is equal to that of the atmosphere.

"Ground water table, perched" means unconfined ground water separated from an underlying body of ground water by an unsaturated zone. Its water table is a perched water table. It is underlain by a restrictive strata or impervious layer. Perched ground water may be either permanent, where recharge is frequent enough to maintain a saturated zone above the perching bed, or temporary, where intermittent recharge is not great or frequent enough to prevent the perched water from disappearing from time to time as a result of drainage over the edge of or through the perching bed.

"Gulch" means a small rocky ravine or a narrow gorge, especially one with an ephemeral stream running through it.

"Gully" means a channel or small valley, especially one carved out by persistent heavy rainfall or an ephemeral stream.

"Impervious strata" means a layer that prevents water or root penetration. In addition, it shall be defined as unsuitable soils or soils having a percolation rate slower than 60 minutes per inch for conventional systems.

"Installer" means a qualified person with an appropriate contractor's license and knowledgeable in the installation or repair of an onsite wastewater system or its components.

"Intermittent stream" means a stream that flows for a period longer than an ephemeral stream on a seasonal basis or after a precipitation event.

"Invert" means the lowest portion of the internal cross section of a pipe or fitting.

"Lateral" means a length of distribution pipe or chambered trenches in the absorption system.

"Local health department" means a county or multi-county local health department established under Title 26A.

"Lot" means a portion of a subdivision, or any other parcel of land intended as a unit for transfer of ownership or for development or both and may not include any part of the right-of-way of a street or road.

"Malfunctioning or failing system" means an onsite wastewater system that is not functioning in compliance with the requirements of this regulation and may include:

- A. absorption systems that seep or flow to the surface of the ground or into waters of the state;
- B. systems that overflow from any of their components;
- C. systems that, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building drainage system;
- D. systems discharging effluent that does not comply with applicable effluent discharge standards;
- E. leaking septic tanks; or
- F. noncompliance with standards stipulated on or by the construction permit, operating permit, or both.

"Maximum ground water table" means the highest elevation that the top of the "ground water table" or "ground

water table, perched" is expected to reach for any reason over the full operating life of the onsite wastewater system at that site.

"May" means discretionary, permissive, or allowed.

"Mound system" means an alternative onsite wastewater system where the bottom of the absorption system is placed above the elevation of the original site, and the absorption system is contained in a mounded fill body above that grade.

"Non-closed loop distribution" means a distribution method where the absorption system layout has lateral ends that are not connected.

"Non-domestic effluent" means the liquid discharge from any treatment unit including a septic tank that has a BOD5 equal or greater than 250 mg/L; or TSS equal to or greater than 145 mg/L; or fats, oils, and grease equal to or greater than 25 mg/L.

"Non-domestic wastewater" means process wastewater originating from the manufacture of specific products. Such wastewater is usually more concentrated, more variable in content and rate, and requires more extensive or different treatment than domestic wastewater.

"Non-public water source" means a culinary water source that is not defined as a public water source.

"Non-residential" means a building that produces domestic wastewater, and is not a single family dwelling.

"Onsite wastewater system" means an underground wastewater dispersal system that is designed for a capacity of 5,000 gallons per day or less, and is not designed to serve multiple dwelling units that are owned by separate owners except condominiums. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating permit" means the permit that authorizes the operation and maintenance of an onsite wastewater system or wastewater holding tank. It may have a fee component that requires periodic renewal.

"Packed bed media system" means an alternative onsite wastewater system that uses natural or synthetic media to treat wastewater. Biological treatment is facilitated via microbial growth on the surface of the media. The system may include a pump tank, a recirculation tank, or both.

"Percolation rate" means the time expressed in minutes per inch required for water to seep into saturated soil at a constant rate during a percolation test.

"Percolation test" means the method used to measure the permeability of the soil by measuring the percolation rate as described in these rules. This is sometimes referred to as a "perc test".

"Permeability" means the rate at which a soil transmits water when saturated.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state as defined in Section 19-1-103.

"Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for public health and safety as defined in Section 19-5-102.

"Pressure distribution" means a method designed to uniformly distribute effluent under pressure within an absorption system.

"Public health hazard" means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage that are likely to cause human illness, disorders or disability. These may include pathogenic viruses and bacteria, parasites, toxic chemicals and radioactive isotopes. A malfunctioning onsite wastewater system constitutes a public health hazard.

"Public water source" means a culinary water source, either publicly or privately owned, providing water for human consumption and other domestic uses, as defined in Title R309.

"Pump tank" means a watertight receptacle equipped with a pump and placed after a septic tank or other treatment component.

"Pump vault" means a device installed in a septic or pump tank that houses a pump and screens effluent with 1/8 inch openings or smaller before it enters the pump.

"Recirculation tank" means the tank that receives, stores, and recycles partially treated effluent and recycles that effluent back through the treatment process or to the absorption area.

"Regulatory authority" means either the Utah Division of Water Quality or the local health department having jurisdiction.

"Replacement area" means sufficient land with suitable soil, excluding streets, roads, easements and permanent structures that complies with the setback requirements of these rules, and is intended for the 100% replacement of absorption systems.

"Rotary tilling" means a tillage operation. Working land by plowing and harrowing in order to make land ready for cultivation, or employing power driven rotary motion of the tillage tool to loosen, shatter and mix soil.

"Sand lined trench system" means an alternative onsite wastewater system consisting of a series of narrow excavated trenches utilizing sand media and pressure distribution.

"Sand media" means sand fill meeting the ASTM C33/C33M - 11A Standard Specification for Concrete Aggregates.

"Saprolite" means weathered material underlying the soil that grades from soft thoroughly decomposed rock to rock that has been weathered sufficiently so that it can be broken in the hands, cut with a knife or easily dug with a backhoe and is devoid of expansive clay. It has rock structure instead of soil structure and does not include hard bedrock or hard fractured bedrock.

"Scarification" means loosening and breaking up of soil compaction in a manner that prevents smearing and maintains soil structure.

"Scum" means a mass of sewage solids, which is buoyed up by entrained gas, grease, or other substances, floating on the surface of wastes in a septic tank.

"Seepage pit" means an absorption system consisting of one or more deep excavated pits, either hollow-lined or filled, utilizing coarse drain media, with a minimum sidewall absorption depth of 48 inches of suitable soil formation below the distribution pipe.

"Septage" means the semi-liquid material that is pumped out of a septic or pump tank, generally consisting of the sludge, liquid, and scum layer.

"Septic tank" means a watertight receptacle that receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption system.

"Sequential distribution" means a distribution method in which effluent does not pass through an absorption area before it enters the succeeding areas through a distribution box or relief line allowing for portions of the absorption area to be isolated.

"Serial distribution" means a distribution method in which effluent passes through an absorption area before entering the succeeding areas through a distribution box or relief line creating a single uninterrupted flow path.

"Shall" means a mandatory requirement.

"Should" means recommended or preferred and is intended to mean a desirable standard.

"Single-family dwelling" means a building designed to be used as a home by the owner or lessee of such building.

"Sludge" means the accumulation of solids that have settled in a septic tank or a wastewater holding tank.

"Slope" means the ratio of the rise divided by the run between two points, typically described as a percentage (rise divided by run multiplied by 100).

"Soil exploration pit" means an open pit dug to permit examination of the soil to evaluate its suitability for absorption systems. This is also referred to as a "test pit".

"Soil log" means a detailed description of soil characteristics and properties.

"Soil structure" means the way in which the individual particles, sand, silt, and clay, are arranged into larger distinct aggregates called peds. The main types of soil structure are granular, platy, blocky, prismatic, and columnar. Soil may not have a visible structure because it is either single grain or massive.

"Soil texture" means the percent of sand, silt, and clay in a soil mixture. Field methods for judging the texture of a soil are found in Section R317-4-14 Appendix C.

"Standard trench" means an absorption trench utilizing drain media into which effluent is discharged through specially designed distribution pipes.

"Suitable soil" means undisturbed soil that through textural and structural analysis or percolation rate meets the requirements for placement of an absorption system.

"Test pit" see "soil exploration pit".

"Unapproved system" means any onsite wastewater system that is deemed by the regulatory authority to be any:

A. installation without the required regulatory oversight, permits, or inspections;

B. repairs to an existing system without the required regulatory oversight, permits, or inspections; or

C. alteration to an existing system without the required regulatory oversight, permits, or inspections.

"USDA system of classification" means the system of classifying soil texture used by the United States Department of Agriculture.

"Waste" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water as defined in Section 19-5-102.

"Wastewater" means sewage, industrial waste or other liquid substances that might cause pollution of waters of the state. Intercepted ground water that is uncontaminated by wastes is not included.

"Wastewater holding tank" means a watertight receptacle designed to receive and store wastewater to facilitate treatment at another location.

"Waters of the state":

A. means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state; and

B. does not include bodies of water confined to and retained within the limits of private property, and that do not develop into or constitute a nuisance, or public health hazard, or a menace to fish or wildlife.

"Wind-blown sand" means sand that is formed by the weathering and erosion of sandstone typically found in sand-dune or sand-sheet deposits and is capable of producing sand and dust storms when disturbed.

R317-4-3. General Standards, Prohibitions, Requirements, and Enforcement.

3.1. Failure to Comply With Rules.

Any person failing to comply with this rule shall be subject to enforcement action as specified in Sections 19-5-115 and 26A-1-123.

3.2. Feasibility.

Onsite wastewater systems are not feasible in some areas and situations. If property characteristics indicate conditions that may fail in any way to meet the requirements specified herein, the use of onsite wastewater systems shall be prohibited.

3.3. Onsite Wastewater System Required.

The drainage system of each dwelling, building or premises covered herein shall receive all wastewater, including bathroom, kitchen, and laundry wastes, and shall have a connection to a public sewer except when such sewer is not available or practicable for use, in which case connection shall be made:

A. to an onsite wastewater system found to be adequate and constructed in accordance with this rule; or

B. to any other type of wastewater system acceptable under Rules R317-1, R317-3, R317-5, R317-401, or R317-560.

3.4. Flows Prohibited From Entering Onsite Wastewater Systems.

No ground water drainage, drainage from roofs, roads, yards, or other similar sources shall discharge into any portion of an onsite wastewater system, but shall be disposed of so they will in no way affect the system. Non-domestic wastes such as chemicals, paints, or other substances that are detrimental to the proper functioning of an onsite wastewater system may not be disposed of in such systems.

3.5. Increased Flows Prohibited.

A person may not connect or expand the use of a single-family dwelling or nonresidential facility connected to an existing onsite wastewater system if the projected wastewater flows would be greater than the original design flow. When the design flow is exceeded, expansion may occur if the onsite wastewater system is modified, permitted, and approved by the regulatory authority for the increased flow.

3.6. Material Standards.

All materials used in onsite wastewater systems shall comply with the standards in this rule.

3.7. Property Lines Crossed.

Systems, including replacement areas, shall be located on the same lot as the building served unless, when approved by the regulatory authority, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot for the construction, operation, and continued maintenance, repair, alteration, inspection, relocation, and replacement of an onsite wastewater system, including all rights to ingress and egress necessary or convenient for the full or complete use, occupation, and enjoyment of the granted easement. The easement shall be large enough to accommodate the proposed onsite wastewater system and replacement area. The easement shall meet the setbacks specified in Section R317-4-13 Table 2.

3.8. Initial Absorption Area and Replacement Area.

A. All properties that utilize onsite wastewater systems shall be required to have a replacement area.

B. The absorption area, including installed system and replacement area, may not be subject to activity that is likely to adversely affect the soil or the functioning of the system. This may include vehicular traffic, covering the area with asphalt, concrete, or structures, filling, cutting or other soil modifications.

3.9. Operation and Maintenance.

Owners of onsite wastewater systems shall operate, maintain, and service their systems according to the standards of this rule.

3.10. No Discharge to Surface Waters or Ground Surface.

Effluent from any onsite wastewater system may not be discharged to surface waters or upon the surface of the ground. Wastewater may not be discharged into any abandoned or

unused well, or into any crevice, sinkhole, or similar opening, either natural or artificial.

3.11. Repair of a Malfunctioning or Unapproved System.

Upon determination by the regulatory authority that a malfunctioning or unapproved onsite wastewater system creates or contributes to any dangerous or unsanitary condition that may involve a public health hazard, or noncompliance with this rule, the regulatory authority shall order the owner to take the necessary action to cause the condition to be corrected, eliminated or otherwise come into compliance.

A. For malfunctioning systems, the local health department shall require and order:

1. all necessary steps, such as maintenance, servicing, repairs, and replacement of system components to correct the malfunctioning system, to meet all rule requirements to the extent possible and may not create any new risk to the environment or public health;

2. effluent quality testing as required by Subsection R317-4-11.4;

3. evaluation of the system design including non-approved changes to the system, the wastewater flow, and biological and chemical loading to the system;

4. additional tests or samples to troubleshoot the system malfunction.

B. The regulatory authority may require fees for additional inspections, reviews, and testing.

3.12. Procedure for Wastewater System Abandonment.

A. When a dwelling served by an onsite wastewater system is connected to a public sewer, the septic tank shall be abandoned and shall be disconnected from and bypassed with the building sewer unless otherwise approved by the regulatory authority.

B. Whenever the use of an onsite wastewater system has been abandoned or discontinued, the owner of the real property on which such wastewater system is located shall render it safe by having the septic tank, any other tanks, hollow seepage pit, or cesspool wastes pumped out or otherwise disposed of in an approved manner. Within 30 days the tanks shall be:

1. crushed in place and the void filled;
2. completely filled with earth, sand, or gravel; or
3. removed.

C. The regulatory authority may require oversight, permit, or inspection of the abandonment process.

3.13. Septage Management.

A person shall only dispose of septage, or sewage contaminated materials in a location or manner in accordance with the regulations of the division and the local health department having jurisdiction.

3.14. Multiple Dwelling Units.

Multiple dwelling units under individual ownership, except condominiums, may not be served by a single onsite wastewater system except where that system is under the sponsorship of a body politic. Plans and specifications for such systems shall be submitted to and approved by the division. Issuance of a construction permit by the board shall constitute approval of plans and authorization for construction. Before the permit is issued, the division shall review plans with the local health department having jurisdiction over the proposed onsite wastewater system.

R317-4-4. Feasibility Determination.

4.1. General Criteria for Determining Onsite Wastewater System Feasibility.

The regulatory authority shall determine the feasibility of using an onsite wastewater system. The regulatory authority will review required information for any existing or proposed lot to determine onsite wastewater system feasibility. The required information shall be prepared at the owner's expense by, or under the supervision of, a qualified person approved by

the regulatory authority.

A. General Information.

The required information shall include:

1. the county recorder's plat and parcel ID and situs address if available;
2. name and address of the property owner and person requesting feasibility; and
3. the location, type, and depth of all existing and proposed non-public water supply sources within 200 feet of the proposed onsite wastewater systems, and of all existing or proposed public water supply sources within 1,500 feet of the proposed onsite wastewater systems.
 - a. If the lot is located in aquifer recharge areas or areas of other particular geologic concern, the regulatory authority may require such additional information relative to ground water movement, or possible subsurface wastewater flow.
 - b. If the proposed onsite wastewater system is located within any drinking water source protection zone two, this zone shall be shown.
4. The location and distance to nearest sewer, owner of sewer, whether property is located within service boundary, and size of sewer.
5. Statement of proposed use if other than a single-family dwelling.

B. Soil and Site Evaluation.

1. Soil Exploration Pit and Percolation Test.

- a. A minimum of one soil exploration pit shall be excavated to allow the evaluation of the soil. The soil exploration pit shall be constructed and soil log recorded as detailed in Section R317-4-14 Appendix C.
- b. The regulatory authority shall have the option of requiring a percolation test in addition to the soil exploration pit.
- c. The regulatory authority:
 - i. shall require additional soil exploration pits, percolation tests, or both where flows are greater than 1,000 gallons per day; and
 - ii. may require additional pits, tests, or both where:
 - (1) soil structure varies;
 - (2) limiting geologic conditions are encountered; or
 - (3) the regulatory authority deems it necessary.
- d. The percolation test shall be conducted as detailed in Section R317-4-14 Appendix D.
- e. Soil exploration pits and percolation tests shall be conducted as closely as possible to the proposed absorption system site. The regulatory authority shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. All soil logs and percolation test results shall be submitted to the regulatory authority.
- f. When there is a substantial discrepancy between the percolation rate and the soil classification, it shall be resolved through additional soil exploration pits, percolation tests, or both.
- g. Absorption system feasibility shall be based on Section R317-4-13 Table 5 or 6.

2. Wind-Blown Sand.

The extremely fine grained wind-blown sand found in some parts of Utah shall be deemed not feasible for absorption systems. This does not apply to lots that have received final local health department approval prior to the effective date of this rule.

- a. Percolation test results in wind-blown sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time. For lots that have received final local health department approval prior to the effective date of this rule, systems may be constructed in such material provided it is found to be within the required range of percolation rates specified in these rules, and provided further that the required

area shall be calculated on the assumption of minimum acceptable percolation rate of 60 minutes per inch for standard trenches, deep wall trenches, and seepage pits, and 40 minutes per inch for absorption beds.

3. Suitable Soil Depth.

For conventional systems, effective suitable soil depth shall extend at least 48 inches or more below the bottom of the dispersal system to bedrock formations, impervious strata, or excessively permeable soil. Some alternative onsite wastewater systems may have other requirements.

4. Ground Water Requirements.

The elevation of the anticipated maximum ground water table shall meet the separation requirements of the anticipated absorption systems. Local health departments and other local government entities may impose stricter separation requirements between absorption systems and the maximum ground water table when deemed necessary. Building lots recorded or having received final local health department approval prior to May 21, 1984 shall be subject to the ground water table separation requirements of the then Part IV of the Code of Waste Disposal Regulations dated June 21, 1967, that states "high ground water elevation shall be at least 1 foot below the bottom of absorption systems and at least 4 feet below finished grade". Notwithstanding this grandfather provision for recorded or other approved lots, the depth to ground water requirements are applicable if compelling or countervailing public health interests would necessitate application of the more stringent requirements of this regulation.

a. Maximum Ground Water.

Maximum ground water table shall be determined where the anticipated maximum ground water table, including irrigation induced water table, might be expected to rise closer than 48 inches to the elevation of the bottom of the onsite wastewater system. Maximum ground water table shall be determined where alternative onsite wastewater systems may be considered based on groundwater elevations. The maximum ground water table shall be determined by the following.

- i. Regular monitoring of the ground water table, or ground water table, perched, in an observation well for a period of one year, or for the period of the maximum groundwater table.

(1) Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation.

- ii. Direct visual observation of the maximum ground water table in a soil exploration pit for:

- (1) evidence of crystals of salt left by the maximum ground water table; or
- (2) chemically reduced iron in the soil, reflected by redoxmorphic features, i.e. a mottled coloring.

(3) Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation in determining the anticipated maximum ground water table elevation.

- iii. In cases where the anticipated maximum ground water table is expected to rise to closer than 34 inches from the original ground surface and an alternative or experimental onsite wastewater system would be considered, previous ground water records and climatological or other information shall be used to adjust the observed maximum ground water table in determining the anticipated maximum ground water table.

b. Curtain Drains.

A curtain drain or other effective ground water interceptor may be allowed as an attempt to lower the groundwater table to meet the requirements of this rule. The regulatory authority shall require that the effectiveness of such devices in lowering the ground water table be demonstrated during the season of

maximum ground water table.

4. Ground Slope.

Absorption systems may not be placed on slopes where the addition of fluids is judged to create an unstable slope.

a. Absorption systems may be placed on slopes between 0% and 25%, inclusive.

b. Absorption systems may be placed on slopes greater than 25% but not exceeding 35% if:

i. all other requirements of this rule can be met;

ii. effluent from the proposed system will not contaminate ground water or surface water, and will not surface or move off site before it is adequately treated to protect public health and the environment;

iii. no slope will fail, and there will be no other landslide or structural failure if the system is constructed and operated adequately, even if all properties in the vicinity are developed with onsite wastewater systems; and

iv. a report is submitted by a professional engineer or professional geologist that is licensed to practice in Utah. The report shall be imprinted with the engineer's or geologist's registration seal and signature and shall include the following.

(1) Predictions and supporting information of ground water transport from the proposed system and of expected areas of ground water mounding.

(2) A slope stability analysis that shall include information about the geology of the site and surrounding area, soil exploration and testing, and the effects of adding effluent.

(3) The cumulative effect on slope stability of added effluent if all properties in the vicinity were developed with onsite wastewater systems.

c. Absorption systems may not be placed on slopes greater than 35%.

5. Other Factors Affecting Onsite Wastewater System Feasibility.

a. The locations of all rivers, streams, creeks, dry or ephemeral washes, lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, that will affect building sites, shall be provided.

b. Areas proposed for onsite wastewater systems shall comply with the setbacks in Section R317-4-13 Table 2.

c. If any part of a property lies within or abuts a flood plain area, the flood plain shall be shown within a contour line and shall be clearly labeled on the plan with the words "flood plain area".

6. Unsuitable.

Where soil and other site conditions are clearly unsuitable for the placement of an onsite wastewater system, there is no need for conducting soil exploration pits or percolation tests.

C. Lot Size.

One of the following two methods shall be used for determining minimum lot size. Determination of minimum lot size by the regulatory authority would not preempt local governments from establishing larger minimum lot sizes.

1. Method 1.

The local health department having jurisdiction may determine minimum lot size. Under this method, local health departments may elect to involve other affected governmental entities and the division in making joint lot size determinations. The division will develop technical information, training programs, and provide engineering and geohydrologic assistance in making lot size determinations that will be available to local health departments upon their request. Individuals or developers requesting lot size determinations under this method will be required to submit to the local health department, at their own expense, a report that accurately takes into account at least the following factors:

a. soil type and depth;

b. area drainage, lot drainage, and potential for flooding;

c. protection of surface and ground waters;

d. setbacks from property lines, water supplies, etc.;

e. source of culinary water;

f. topography, geology, hydrology and ground cover;

g. availability of public sewers;

h. activity or land use, present and anticipated;

i. growth patterns;

j. individual and accumulated gross effects on water quality;

k. reserve areas for additional subsurface dispersal;

l. anticipated wastewater volume;

m. climatic conditions;

n. installation plans for wastewater system; and

o. area to be utilized by dwelling and other structures.

2. Method 2.

a. Whenever local health departments do not establish minimum lot sizes for single-family dwellings that will be served by onsite wastewater systems, the requirements of Section R317-4-13 Tables 1.1 and 1.2 shall be met.

b. For non-residential facilities, one-half of the buildable area of the lot must be available for the absorption system and replacement area.

i. The area required for the absorption system and replacement area may be adjusted during the permitting process.

4.2. Subdivision Onsite Wastewater System Feasibility Determination.

A. In addition to information in Subsection R317-4-4.1, the following information must be provided on a plat map:

1. the proposed street and lot layout with all lots consecutively numbered;

2. size and dimensions of each lot, with the minimum required area sufficient to permit the safe and effective use of an onsite wastewater system, including a replacement area for the absorption system;

3. location of all water lines;

4. location of any easements; and

5. areas proposed for wastewater dispersal, including replacement area.

B. Surface drainage systems shall be included on the plan, as naturally occurring, and as altered by roadways or any drainage, grading or improvement, installed or proposed by the developer. The details of the system shall show the surface drainage structures, whether ditches, pipes, or culverts, will in no way affect onsite wastewater systems on the property.

C. Each proposed lot shall have at least one soil exploration pit, percolation test, or both.

1. The regulatory authority may allow fewer tests based on the uniformity of prevailing soil and ground water characteristics and available percolation or soil log test data.

2. If soil conditions and surface topography indicate, a greater number of soil exploration pits or percolation tests may be required by the regulatory authority.

3. The location of all soil exploration pits and percolation test holes shall be clearly identified on the subdivision final plat and identified by a key number or letter designation.

4. The results of such soil tests, including stratified depths of soils and final percolation rates for each lot shall be recorded on or with the final plat.

5. Soil exploration pits and percolation tests shall be conducted as closely as possible to the dispersal system sites on the lots or parcels.

D. Whenever available, information from published soil studies of the area of the proposed subdivision shall be submitted for review.

E. If soil or site conditions exist in or near the project so as to complicate design and location of an onsite wastewater system, a detailed system layout shall be provided for those lots presenting the greatest design difficulty by meeting rules in Section R317-4-5.

4.3. Statement of Feasibility.

After review of all information, plans, and proposals, the regulatory authority shall make a written determination of feasibility stating the results of the review or the need for additional information.

A. An affirmative statement of feasibility for a subdivision does not imply that it will be possible to install onsite wastewater systems on all of the proposed lots, but shall mean that such onsite wastewater systems may be installed on the majority of the proposed lots in accordance with minimum state requirements and any conditions that may be imposed.

B. The regulatory authority shall establish the expiration, if any, of the statement of feasibility.

R317-4-5. Plan Review and Permitting.

5.1. Plan Review and Permitting.

A. Designer Certification.

All plans and specifications shall be prepared by an individual certified in accordance with Rule R317-11.

B. Domestic Wastewater.

Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems that receive domestic wastewater shall be submitted to the regulatory authority.

C. Non-Domestic Wastewater.

Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems that receive non-domestic wastewater shall be submitted to and approved by the local health department having jurisdiction and the division.

D. Construction Permit Required.

The regulatory authority shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, a construction permit shall be issued to the individual making the submittal.

1. Construction may not commence until the construction permit has been issued by the regulatory authority.

E. Information Required.

Plans submitted for review shall be drawn to scale, 1" = 10', 20' or 30', or other scale as approved by the regulatory authority. Plans shall be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Depending on the individual site and circumstances, or as determined by the regulatory authority, some or all of the following information may be required.

1. Applicant Information.

a. The name, current address, and telephone number of the applicant.

b. Complete address, legal description of the property, or both to be served by this onsite wastewater system.

2. Onsite Wastewater System Site Plan.

a. Submittal date of plan.

b. North arrow.

c. Lot size and dimensions.

d. Legal description of property.

e. Ground surface contours, preferably at 2 foot intervals, of both the original and proposed final grades of the property, or relative elevations using an established bench mark.

f. Location and explanation of type of dwelling or structure to be served by an onsite wastewater system.

i. Maximum number of bedrooms, including statement of whether a finished or unfinished basement will be provided, or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day.

g. Location and dimensions of paved and unpaved driveways, roadways and parking areas.

h. Location and dimensions of the essential components of the wastewater system including the replacement area for the absorption system.

i. Location of all soil exploration pits and all percolation test holes.

j. Location of building sewer and water service line to serve the building.

k. Location of easements or drainage right-of-ways affecting the property.

l. Location of all intermittent or year-round streams, ditches, watercourses, ponds, subsurface drains, etc. within 100 feet of proposed onsite wastewater system.

m. The location, type, and depth of all existing and proposed non-public water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems and associated source protection zones.

n. Distance to nearest public water main and size of main.

o. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.

3. Statement with Site Plan.

Statement indicating the source of culinary water supply, whether a well, spring, non-public or public system, its location and distances from all onsite wastewater systems within 200 feet.

4. Site Assessment and Soil Evaluation.

Soil Logs, Percolation Test Certificates, or both.

a. Statement with supporting evidence indicating the maximum anticipated ground water table and the flooding potential for onsite wastewater system sites.

5. Relative Elevations.

Show relative elevations of the following, using an established bench mark.

a. Building drain outlet.

b. The inlet and outlet inverts of any septic tanks.

c. Septic tank access cover, including height and diameter of riser, if used.

d. Pump tank inlet, if used, including height and diameter of riser.

e. The outlet invert of the distribution box, if provided, and the ends or corners of each distribution pipe lateral in the absorption system.

f. The final ground surface over the absorption system.

6. System Design.

Details for said site, plans, and specifications are listed in Section R317-4-6.

a. Schedule or grade, material, diameter, and minimum slope of building sewer and effluent sewer.

b. Septic tank and pump tank capacity, design, cross sections, etc., materials, and dimensions. If tank is commercially manufactured, state the name and address of manufacturer.

c. Absorption system details, including the following:

i. details of drop boxes or distribution boxes, if provided;

ii. schedule or grade, material, and diameter of distribution pipes;

iii. length, slope, and spacing of each absorption system component;

iv. maximum slope across ground surface of absorption system area;

v. distance of absorption system from trees, cut banks, fills, or subsurface drains; and

vi. cross section of absorption system showing the:

(1) depth and width of absorption system excavation;

(2) depth of distribution pipe;

(3) depth of filter material;

(4) barrier material, i.e. synthetic filter fabric, straw, etc.,

used to separate filter material from cover; and

(5) depth of cover.

d. Pump, if provided, details as referenced in Section R317-4-14 Appendix B.

e. If an alternative system is designed, include all pertinent information to allow plan review and permitting for compliance with this rule.

F. Plans Submitted.

1. All applicants requesting plan approval for an onsite wastewater system shall submit a sufficient number of copies of the above required information to enable the regulatory authority to retain one copy as a permanent record.

2. Applications may be rejected if proper information is not submitted.

R317-4-6. Design Requirements.

6.1. System Location.

A. Onsite wastewater systems are not suitable in some areas and situations. Location and installation of each system shall be such that with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, public health hazard, or endanger the quality of any waters of the state.

B. In determining a suitable location for the system, due consideration shall be given to such factors as:

1. the minimum setbacks in Section R317-4-13 Table 2;
2. size and shape of the lot;
3. slope of natural and final grade;
4. location of existing and future water supplies;
5. depth of ground water and bedrock;
6. soil characteristics and depth;
7. potential flooding or storm catchment;
8. possible expansion of the system; and
9. future connection to a public sewer system.

6.2. Minimum Setback Distances.

All systems, including the replacement area, shall conform to the minimum setback distances in Section R317-4-13 Table 2.

6.3. Maximum Ground Slope.

All absorption systems, including the replacement area, shall conform to the ground slope requirements in Section R317-4-4.

6.4. Estimates of Wastewater Quantity.

A. Single Family Dwellings.

A minimum of 300 gallons per day, 1 or 2 bedroom, and 150 gallons per day for each additional bedroom shall be used.

B. Non-Residential Facilities.

The quantity of wastewater shall be determined accurately, preferably by actual measurement. Metered water supply figures for similar installations can usually be relied upon, providing the non-disposable consumption, if any, is subtracted. Where this data is not available, the minimum design flow figures in Section R317-4-13 Table 3 shall be used to make estimates of flow.

C. Design Capacity.

In no event shall the anticipated maximum daily wastewater flow exceed the capacity for which a system is designed.

6.5. Non-Domestic Effluent.

Effluent shall be treated to levels at or below the defined parameters of non-domestic effluent before being discharged into an absorption system.

6.6. Building Sewer.

A. The building sewer shall have a minimum inside diameter of 4 inches and shall comply with the minimum standards in Section R317-4-13 Table 4.

1. If the sewer leaving the house is three inches, the building sewer may be three inches.

B. Building sewers shall be laid on a uniform minimum slope of not less than 1/4 inch per foot or 2.08% slope.

C. The building sewer shall have a minimum of one cleanout and cleanouts every 100 feet.

1. A cleanout is also required for each aggregate horizontal change in direction exceeding 135 degrees.

2. Ninety degree ells are not recommended.

D. Building sewers shall be separated from water service pipes in separate trenches, and by at least 10 feet horizontally, except that they may be placed in the same trench when all of the following conditions are met.

1. The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the building sewer.

2. The water service pipe shall be placed on a solid shelf excavated at one side of the common trench with a minimum clear horizontal distance of at least 18 inches from the sewer or drain line.

3. The number of joints in the water service pipe should be kept to a minimum, and the materials and joints of both the sewer and water service pipes shall be of strength and durability to prevent leakage under adverse conditions.

4. If the water service pipe crosses the building sewer, it shall be at least 18 inches above the latter within 10 feet of the crossing. Joints in water service pipes should be located at least 10 feet from such crossings.

E. Building sewer placed under driveways or other areas subjected to heavy loads shall receive special design considerations to ensure against crushing or disruption of alignment.

6.7. Septic Tank.

All septic tanks shall meet the requirements of Section R317-4-14 Appendix A and be approved by the division. Septic tanks shall be constructed of sound, durable, watertight materials that are not subject to excessive corrosion, frost damage, or decay. They shall be designed to be watertight, and to withstand all expected physical forces.

A. Liquid capacity.

1. A septic tank that serves a non-residential facility shall have a liquid capacity of at least 1-1/2 times the designed daily wastewater flow. In all cases the capacity shall be at least 1,000 gallons.

2. The capacity of a septic tank that serves a single family dwelling shall be based on the number of bedrooms that can be anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms. Unfinished basements shall be counted as a minimum of one additional bedroom.

a. The minimum liquid capacity of the tank shall be 1,000 gallons for up to three bedroom homes.

b. The minimum liquid capacity of the tank shall be 1,250 gallons for four bedroom homes.

c. Two hundred fifty gallons per bedroom shall be added to the liquid capacity of the tank for each additional bedroom over four bedrooms.

3. The regulatory authority may require a larger capacity than specified in this subsection as needed for unique or unusual circumstances.

B. Tanks in Series.

1. No tank in the series shall be smaller than 1,000 gallons.

2. The capacity of the first tank shall be at least two-thirds of the required total septic tank volume. If compartmented tanks are used, the compartment of the first tank shall have this two-thirds capacity.

3. The connecting pipes between each successive tank shall meet the slope requirements of the building sewer and shall be unrestricted except for the inlet to the first tank and the outlet for the last tank.

C. Maximum Number of Tanks or Compartments.

The maximum number of tanks and compartments in series may not exceed three.

D. Inlets and Outlets.

Inlet or outlet devices shall conform to the following:

1. Approved tanks with offset inlets may be used where they are warranted by constraints on septic tank location.
2. Multiple outlets from septic tanks shall be prohibited unless preauthorized by the regulatory authority.
3. A gas deflector may be added at the outlet of the tank to prevent solids from entering the outlet pipe of the tank.

E. Effluent Screens.

All septic tanks may have an effluent screen installed at the outlet of the terminal tank. The screen shall prevent the passage of solid particles larger than a nominal 1/8 inch diameter sphere. The screen shall be easily removable for routine servicing by installing a riser to the ground surface, with an approved cover. Effluent screens are required for non-domestic wastewater systems, unless screening is achieved by some other means acceptable to the regulatory authority.

F. Access to Tank Interior.

Adequate access to the tank shall be provided to facilitate inspection, pumping, servicing, and maintenance, and shall have no structure or other obstruction placed over it and shall conform to all of the following requirements.

1. Riser Heights.

Watertight risers are required, extending to within 6 inches of the surface of the ground when soil covering the septic tank is greater than 6 inches. Preferably, the riser should be brought up to the final grade to encourage periodic servicing and maintenance.

a. If a septic tank is located under paving or concrete, risers shall be extended up through the paving or concrete.

b. If non-domestic wastewater is generated, risers shall be extended to the final grade.

2. Riser Diameter.

The inside diameter of the riser shall be a minimum of 20 inches.

3. Riser Covers.

Riser covers shall be designed and constructed in such a manner that:

- a. they cannot pass through the access openings;
- b. when closed will be child-proof;
- c. will prevent entrance of surface water, dirt, or other foreign materials; and
- d. seal odorous gases in the tank.

4. Riser Construction.

The risers shall be constructed of durable, structurally sound materials that are approved by the regulatory authority and designed to withstand expected physical loads and corrosive forces.

5. Multiple Risers Required.

When the tank capacity exceeds 3,000 gallons, a minimum of two access risers shall be installed.

G. Other Requirements.

Tank installation shall conform to all of the following requirements.

1. Ground Water.

a. Septic tanks located in high groundwater areas shall be designed with the appropriate weighted or anti-buoyancy device to prevent flotation in accordance with the manufacturer's recommendations.

b. The building sewer inlet of the tank may not be installed at an elevation lower than the highest anticipated groundwater elevation.

i. If the tank serves a mound or packed bed alternative system and has an electronic control panel capable of detecting water intrusion the building sewer inlet of the tank may be installed below the maximum anticipated groundwater elevation.

(1) Any component below the anticipated maximum ground water elevation shall be water tightness tested.

2. Depth of Septic Tank.

The minimum depth of cover over the septic tank shall be at least 6 inches and a maximum of 48 inches at final grading. For unusual situations, the regulatory authority may allow deeper burial provided the following conditions are met.

a. The tank shall be approved by the division for the proposed depth and burial cover load.

b. Risers shall:

i. be installed over the access openings of the inlet and outlet baffles or sanitary tees; and

ii. conform to Subsection R317-4-6.7.F, except risers shall be at least 24 inches in diameter.

6.8. Grease Interceptor Tanks.

A grease interceptor tank or automatic grease removal device may be required by the regulatory authority to receive the drainage from fixtures and equipment with grease-laden waste. It shall be sized according to the current Plumbing Code.

A. Accessibility and Installation.

Tanks installed in the ground shall conform to Subsection R317-4-6.7.F for accessibility and installation, except risers are required and shall be brought to the surface of the ground. All interior compartments shall be accessible for inspecting, servicing, and pumping.

6.9. Pump and Recirculation Tanks.

A. Tanks shall be constructed of sound, durable, watertight materials that are not subject to excessive corrosion, frost damage, or decay. They shall be designed to be watertight, and to withstand all expected physical forces.

B. Pump tank volume shall have a liquid capacity adequate for the minimum operating volume that includes the dead space, dosing volume, and surge capacity, and shall have the emergency operation capacity of:

1. storage capacity for the system design daily wastewater flow;

2. at least two independent power sources with appropriate wiring installed; or

3. other design considerations approved by the regulatory authority that do not increase public health risks in the event of pump failure.

C. Accessibility and Installation.

Tanks shall conform to Subsection R317-4-6.7.F for accessibility and installation, except risers are required and shall be brought to the surface of the ground. All interior compartments shall be accessible for inspecting, servicing, and pumping.

D. Outlets of septic tanks upstream of pump tanks shall be fitted with an effluent screen, unless a pump vault is used in a pump tank.

6.10. Pump Vaults.

Pump vaults may be used when approved by the regulatory authority.

A. The vault shall be constructed of durable material and resistant to corrosion.

B. The vault shall have an easily accessible screen with 1/8 inch openings or smaller.

C. All components of the vault shall be accessible from the surface.

D. When a pump vault is used in a septic tank:

1. The tank size shall be increased by the larger of the following:

a. two hundred fifty gallons; or

b. ten percent of the required capacity of the tank.

2. At least two independent power sources with appropriate wiring shall be installed.

3. The maximum drawdown within the tank shall be no more than 3 inches per dose.

6.11. Pumps.

See Section R317-4-14 Appendix B for details.

6.12. Sampling Ports.

When a system is required to have effluent sampling or receives non-domestic wastewater, the system shall include a sampling port at an area approved by the regulatory authority capable of sampling effluent prior to the absorption system.

6.13. Effluent Sewer.

A. The effluent sewer shall have a minimum inside diameter of 4 inches and shall comply with the minimum standards in Section R317-4-13 Table 4.

B. The effluent sewer shall extend at least 5 feet beyond the septic tank before entering the absorption system.

C. Effluent sewers shall be laid on a uniform minimum slope of not less than 1/4 inch per foot or 2.08% slope. When it is impractical, due to structural features or the arrangement of any building, to obtain a slope of 1/4 inch per foot, a sewer pipe of 4 inches in diameter or larger may have a slope of not less than 1/8 inch per foot or 1.04% slope when approved by the regulatory authority.

D. The effluent sewer lines shall have cleanouts at least every 100 feet.

E. Effluent sewer placed under driveways or other areas subjected to heavy loads shall receive special design considerations to ensure against crushing or disruption of alignment.

6.14. Absorption Systems.

A. System Types.

1. Absorption Trenches.

- a. Standard Trenches.
- b. Chambered Trenches.
- c. Bundled Synthetic Aggregate Trenches.
2. Absorption Beds.
3. Deep Wall Trenches.
4. Seepage Pits.

B. General Requirements.

1. Replacement Area for Absorption Systems.

Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for 100% replacement of each absorption system. If approved by the regulatory authority, the area between standard trenches or deep wall trenches may be regarded as replacement area.

a. In lieu of a replacement area, two complete absorption systems shall be installed with a diversion valve. The valve shall be accessible from the final grade. The valve should be switched at least annually.

2. Protection of Absorption Systems.

The site of the initial and replacement absorption system may not be covered by asphalt, concrete, or structures, or be subject to vehicular traffic, or other activity that would adversely affect the soil, such as construction material storage, soils storage, etc. This protection applies before and after construction of the onsite wastewater system.

3. Sizing Criteria for Absorption Systems.

Absorption systems shall be sized based on Section R317-4-13 Table 5 or 6.

4. Design Criteria for Absorption Systems.

Many different designs may be used in laying out absorption systems, the choice depending on the size and shape of the available areas, the capacity required, and the topography of the dispersal area.

a. Horizontal Setbacks.

Absorption systems shall comply with the setbacks in Section R317-4-13 Table 2.

b. Sloping Ground.

Absorption systems placed in 10% or greater sloping ground shall be designed so that there is a minimum of 10 feet of undisturbed earth measured horizontally from the bottom of the distribution line to the ground surface. This requirement does not apply to drip irrigation.

c. Undisturbed Natural Earth.

That portion of absorption systems below the top of distribution pipes shall be in undisturbed natural earth.

d. Tolerance.

All piping, chambers, and the bottoms of absorption system excavations shall be designed level.

e. Distribution Pipe.

Distribution pipe for gravity-flow absorption systems shall be 4 inches in diameter and shall comply with the minimum standards in Section R317-4-13 Table 4.

i. The pipe shall be penetrated by at least two rows of round holes, each 1/2 inch in diameter, and located at approximately 6 inch intervals. The perforations should be located at about the five o'clock and seven o'clock positions on the pipe.

ii. The open ends of the pipes shall be capped.

f. Absorption System Laterals.

Absorption system laterals should be designed to receive proportional flows of wastewater.

g. Drain Media Protection.

Drain media shall be covered with a barrier material before being covered with earth backfill.

h. Prohibitions.

i. In gravity-flow absorption systems with multiple distribution lines, the effluent sewer may not be in direct line with any one of the distribution pipes, except where drop boxes or distribution boxes are used.

ii. Any section of distribution pipe laid with non-perforated pipe may not be considered in determining the required absorption area.

iii. Perforated distribution pipe may not be placed under driveways or other areas subjected to heavy loads.

i. Exceptions.

Deep wall trenches and filled seepage pits may be allowed beneath unpaved driveways on a case-by-case basis by the regulatory authority, if the top of the distribution pipe is at least 3 feet below the final ground surface.

C. Effluent Distribution Devices.

1. Distribution Boxes.

Distribution boxes may be used on level or nearly level ground. They shall be watertight and constructed of durable, corrosion resistant material. They shall be designed to accommodate the inlet pipe and the necessary distribution lines.

a. The outlet inverts of the distribution box shall be not less than 1 inch below the inlet invert.

b. Distribution boxes shall have risers brought to final grade.

2. Drop Boxes.

Drop boxes shall be watertight and constructed of durable, corrosion resistant material and may be used to distribute effluent within the absorption system and shall meet the following requirements:

a. Drop boxes shall be designed to accommodate the inlet pipe, an outlet pipe leading to the next drop box, except for the last drop box, and one or two distribution pipes leading to the absorption system.

b. The inlet pipe to the drop box shall be at least 1 inch higher than the outlet pipe leading to the next drop box.

c. The invert of the distribution pipes shall be 1 through 6 inches below the outlet invert. If there is more than one distribution pipe, their inverts shall be at exactly the same elevation.

d. Drop boxes shall have risers brought to final grade.

3. Effluent Pump to Absorption System.

a. If a pump is used to lift effluent to an absorption system, the pump tank or pump vault shall meet the requirements of Subsection R317-4-6.9 or R317-4-6.10 and the pump and controls shall meet the requirements of Section R317-4-14 Appendix B.

b. Pumping to an absorption system may not warrant any

reductions to the absorption area.

4. Other Devices.

Tees, wyes, ells, or other distributing devices may be used as needed to permit proportional flow to the branches of the absorption system.

D. Effluent Distribution Methods.

1. Closed Loop.

In locations where the slope of the ground over the absorption system area is relatively flat, the trenches should be interconnected to produce a closed loop system and the trenches shall be installed at the same elevations.

2. Non-Closed Loop.

If a non-closed loop design is used, effluent shall be proportionally distributed to each lateral.

3. Serial or Sequential.

Serial or sequential distribution may be used in absorption systems designed for sloping areas, or where absorption system elevations are not equal.

a. Serial trenches shall be connected with a drop box or watertight overflow line in such a manner that a trench will be filled before the effluent flows to the next lower trench.

b. The overflow line shall be a 4-inch solid pipe with direct connections to the distribution pipes. It should be laid in a trench excavated to the exact depth required. Care must be exercised to ensure a block of undisturbed earth remains between trenches. Backfill should be carefully tamped.

4. Pressure Distribution.

a. General Requirements.

i. Conformance to Applicable Requirements.

All requirements stated elsewhere in this rule for design, setbacks, construction and installation details, performance, repairs, and abandonment shall apply.

ii. Design Criteria.

All systems that use this method shall be designed by a person certified at Level 3 in accordance with Rule R317-11.

(1) The designer shall submit details of all system components with the necessary calculations.

(2) The designer shall provide to the local health department and to the owner operation and maintenance instructions that include the minimum inspection levels in Section R317-4-13 Table 7 for the system.

iii. Record in the Chain of Title.

When a system utilizing pressure distribution exists on a property, notice of the existence of that system shall be recorded in the chain of title for that property.

b. Design.

i. Pressure distribution may be permitted on any site meeting the requirements for an onsite wastewater system if conditions in this rule can be met.

ii. Pressure distribution should be considered when:

(1) effluent pumps are used;

(2) the flow from the dwelling or structure exceeds 3,000 gallons per day;

(3) soils are a Type 1 or have a percolation rate faster than five minutes per inch; or

(4) soils are a Type 5 or have a percolation rate slower than 60 minutes per inch.

iii. The Utah Guidance for Performance, Application, Design, Operation and Maintenance: Pressure Distribution Systems document shall be used for design requirements, along with the following:

(1) Dosing pumps, controls and alarms shall comply with Section R317-4-14 Appendix B.

(2) Pressure distribution piping.

(a) All pressure transport, manifold, lateral piping, and fittings shall meet PVC Schedule 40 standards or equivalent.

(b) The ends of lateral piping shall be constructed with sweep elbows or an equivalent method to bring the end of the pipe to final grade. The ends of the pipe shall be provided with

threaded plugs, caps, or other devices acceptable to the regulatory authority to allow for access and flushing of the lateral.

E. Design of Absorption Systems.

i. An absorption system shall be designed to approximately follow the ground surface contours so that variation in excavation depth will be minimized. The excavations could be installed at different elevations, but the bottom of each individual excavation shall be level throughout its length.

ii. Absorption systems should be constructed as shallow as is possible to promote treatment and evapotranspiration.

iii. Observation ports may be placed to observe the infiltrative surfaces of the trenches or beds.

1. Absorption Trenches.

a. Absorption trenches shall conform to the following:

i. The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.

ii. The effective absorption area of absorption trenches shall be calculated as the total bottom area of the excavated trench system in square feet.

iii. Minimum number of absorption trenches: 2.

iv. Maximum length of absorption trenches, not including connecting trenches: 150 feet.

v. Minimum spacing of absorption trenches from wall to wall: 7 feet.

vi. Minimum width of absorption trench excavations: 24 inches.

vii. Maximum width of absorption trench excavations: 36 inches.

viii. Minimum depth of absorption trench excavations below original, natural grade: 10 inches.

ix. Minimum depth of soil cover over the absorption trenches: 6 inches.

x. Minimum separation from the bottom of the absorption trenches to:

(1) the anticipated maximum ground water table: 24 inches; and

(2) unsuitable soil or bedrock formations: 48 inches.

b. Standard Trenches.

Standard trenches shall conform to the following:

i. Top of distribution pipe may not be installed above original, natural grade.

ii. The distribution pipe shall be centered in the absorption trench and placed the entire length of the trench.

iii. Drain media shall extend the full width and length of the trenches to a depth of at least: 12 inches.

iv. Minimum depth of drain media under the distribution pipe: 6 inches.

v. Minimum depth of drain media over the distribution pipe: 2 inches.

vi. Minimum depth of cover over the barrier material: 6 inches.

c. Chambered Trenches.

Chambered trenches shall conform to the following:

i. All chambers shall meet International Association of Plumbing and Mechanical Officials (IAPMO) Standard PS 63-2005, which is hereby incorporated into this rule by reference.

ii. The minimum required effective absorption area of chambered trenches shall be calculated:

(1) for Type A Chambers as: 36 inches; and

(2) for Type B Chambers as: 24 inches;

(3) using Section R317-4-13 Table 5 or 6 and may be reduced by: 30%.

iii. The chambered trenches shall be designed and installed in conformance with manufacturer recommendations, as modified by these rules.

iv. Type A Chambers.

(1) Minimum width of chambers: 30 inches.

- (2) Maximum width of trench excavations: 36 inches.
- v. Type B Chambers.
- (1) Minimum width of chambers: 22 inches.
- (2) Maximum width of trench excavations: 24 inches.
- vi. Minimum elevation of the inlet pipe invert from the bottom of the chamber: 6 inches.
- vii. All chambers shall have a splash plate under the inlet pipe or another design feature to avoid unnecessary channeling into the trench bottom.
- viii. Inlet and outlet effluent sewer pipes shall enter and exit the chamber endplates.
- ix. Minimum depth of cover over the chambers: 12 inches.
- d. Bundled Synthetic Aggregate Trenches.
- Bundled synthetic aggregate trenches shall conform to the following.
- i. All synthetic aggregate bundles shall meet IAPMO Standards for the General, Testing and Marking and Identification of the guide criteria for Bundled Expanded Polystyrene Synthetic Aggregate Units.
- ii. The effective absorption area of bundled synthetic aggregate trenches shall be calculated as the total bundle length times the total bundle width in square feet.
- iii. The bundled synthetic aggregate trenches shall be designed and installed in conformance with manufacturer recommendations, as modified by these rules.
- iv. Only 12-inch diameter bundles are approved in this rule.
- (1) For bundles with perforated pipe the minimum depth of synthetic aggregate under pipe: 6 inches.
- v. Width of trenches.
- (1) When designed for a 3 foot wide trench, three bundles are laid parallel to each other with the middle bundle containing perforated pipe.
- (2) When designed for a 2 foot wide trench, two bundles are placed on the bottom, with one bundle containing perforated pipe.
- vi. Minimum depth of cover over the bundles: 12 inches.
2. Absorption Beds.
- Absorption beds shall conform to the requirements applicable to absorption trenches, except for the following.
- a. The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.
- b. The effective absorption area of absorption beds shall be considered as the total bottom area of the excavated bed system in square feet.
- c. Absorption beds may be built over naturally existing soil types per Section R317-4-13 Table 5 or 6.
- d. The bottom of the entire absorption bed shall be level.
- e. The distribution pipes or chambers shall be interconnected to produce a closed loop distribution system.
- f. Minimum number of laterals in an absorption bed: 2.
- g. Maximum length of laterals in an absorption bed: 150 feet.
- h. Maximum distance between laterals: 6 feet.
- i. Minimum distance between laterals and sidewalls: 1 foot.
- j. Maximum distance between laterals and sidewalls: 3 feet.
- k. Minimum distance between absorption beds: 7 feet.
- l. Minimum depth of an absorption bed excavation from original, natural grade: 10 inches.
- m. Absorption beds with drain media:
- i. Minimum depth of drain media under distribution pipe: 6 inches.
- ii. Minimum depth of drain media over distribution pipe: 2 inches.
- iii. Minimum depth of cover over the barrier material: 6 inches.
- n. Absorption beds with chambers:
- i. Chambers shall be installed with sides touching, no separation allowed.
- ii. All chambers shall be connected in a closed loop distribution system.
- iii. The outlet side of the chamber runs shall be connected through the bottom port of the end plates.
- iv. No absorption area reduction factor shall be given for using chambers in absorption beds.
- v. Minimum depth of cover over the chambers: 12 inches.
3. Deep Wall Trenches.
- Deep wall trenches shall conform to the following:
- a. The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.
- b. The effective absorption area of deep wall trenches shall be calculated using the total trench vertical sidewall area below the distribution pipe. The bottom area and any highly restrictive or impervious strata or bedrock formations may not be considered in determining the effective sidewall absorption area.
- c. If percolation tests are used, they shall be conducted in accordance with Section R317-4-14 Appendix D and in the most restrictive soil horizon.
- d. Maximum length of trenches: 150 feet.
- i. Does not include connecting trenches.
- e. Minimum spacing of trenches from wall to wall: 12 feet,
- or three times the depth of the media under the distribution pipe, whichever is the larger distance.
- f. Vertical depth of trenches.
- i. Minimum effective sidewalls: 2 feet.
- ii. Maximum effective sidewalls: 10 feet.
- iii. Calculate using only suitable soil formation.
- g. Minimum width of trench excavations: 24 inches.
- h. Minimum separation from the bottom of deep wall trench to:
- i. the anticipated maximum ground water table: 48 inches;
- ii. unsuitable soil or bedrock formations: 48 inches.
- i. Drain media shall cover the coarse drain media to permit leveling of the distribution pipe and shall extend the full width and length of the trenches.
- i. Minimum depth of drain media: 12 inches.
- ii. Minimum depth of drain media under the distribution pipe: 6 inches.
- iii. Minimum depth of drain media over the distribution pipe: 2 inches.
- j. Minimum depth of cover over the barrier material: 6 inches.
- k. The distribution pipe shall be centered in the trench and placed the entire length of the trench.
4. Seepage Pits.
- Seepage pits shall be considered as modified deep wall trenches and shall conform to the requirements applicable to deep wall trenches, except for the following:
- a. The effective absorption area of seepage pits shall be calculated using the total pit vertical sidewall area below the distribution pipe. The bottom area and any highly restrictive or impervious strata or bedrock formations may not be considered in determining the effective sidewall absorption area.
- b. Minimum diameter of pits: 3 feet.
- c. Vertical depth of pits.
- i. Minimum effective sidewalls: 4 feet.
- ii. Maximum effective sidewalls: 10 feet.
- iii. Calculate using only suitable soil formation.
- d. Filled Seepage Pits.
- i. In pits filled with coarse drain media, the perforated distribution pipe shall run across each pit. A layer of drain media shall be used for leveling the distribution pipe.

ii. The entire pit shall be completely filled with coarse drain media to at least the top of any permeable soil formation to be calculated as effective sidewall absorption area.

e. Hollow-Lined Seepage Pits.

i. For hollow-lined pits, the inlet pipe shall extend horizontally at least 1 foot into the pit.

ii. The annular space between the lining and excavation wall shall be filled with crushed rock or gravel ranging from 3/4 through 6 inches in diameter and free of fines, sand, clay or organic material. The maximum fines in the gravel shall be 2% by weight passing through a US Standard #10 mesh or 2.0 millimeter sieve.

iii. Minimum width of annular space between lining and sidewall: 12 inches.

iv. Minimum thickness of reinforced perforated concrete liner: 2-1/2 inches.

v. Minimum thickness of reinforced concrete top: 6 inches.

vi. Minimum depth of drain media in pit bottom: 6 inches.

vii. Minimum depth of cover over seepage pit top: 6 inches.

viii. A reinforced concrete top shall be provided.

(1) When the cover over the seepage pit top exceeds 6 inches, risers shall conform to Subsection R317-4-6.7.F for accessibility.

6.15. Alternative Systems.

A. System Types.

1. At-Grade.

2. Mounds.

3. Packed Bed Media.

a. Intermittent Sand Filters.

b. Recirculating Sand Filters.

c. Recirculating Gravel Filters.

d. Textile Filters.

e. Peat Filters.

4. Sand Lined Trenches.

B. General Requirements.

1. Conformance to Applicable Requirements.

All requirements stated elsewhere in this rule for design, setbacks, construction and installation details, performance, repairs and abandonment shall apply unless stated differently for a given alternative system.

2. Sizing Criteria for Alternative Systems.

Absorption area shall be sized based on Section R317-4-13 Table 5 or 6 except as specified in this section.

3. Design Criteria for Alternative Systems.

All alternative systems shall be designed by a person certified at Level 3 in accordance with Rule R317-11.

a. The designer shall submit details of all system components with the necessary calculations.

b. The designer shall provide to the local health department and to the owner operation and maintenance instructions that include the minimum inspection levels in Section R317-4-13 Table 7 for the system.

4. Record in the Chain of Title.

When an alternative system exists on a property, notice of the existence of that system shall be recorded in the chain of title for that property.

C. Design of Alternative Systems.

1. At-Grade Systems.

Absorption trenches and absorption beds may be used in at-grade systems. At-grade systems shall conform to the requirements applicable to absorption trenches and absorption beds, except for the following:

a. Horizontal setbacks in Section R317-4-13 Table 2 are measured from edge of sidewall trench, with the exception of property lines, where the toe of the final cover shall be 5 feet or greater in separation distance to a property line.

b. Minimum number of observations ports provided within absorption area: 2.

i. The ports shall be installed to the depth of the trench or bed.

c. Depth of absorption excavations below natural grade: 0-10 inches.

d. Minimum cover over the absorption area: 6 inches.

e. Maximum slope of natural ground surface: 4%.

f. The maximum side slope for above ground fill shall be four horizontal to one vertical: 25% slope.

g. Where final contours are above the natural ground surface, the cover shall extend from the center of the wastewater system at the same general top elevation for a minimum of 10 feet in all directions beyond the limits of the absorption area perimeter, before beginning the side slope.

2. Mound Systems.

Mound systems shall conform to the following:

a. The design shall generally be based on the Wisconsin Mound Soil Absorption System: Siting, Design and Construction Manual, January 2000 published by the University of Wisconsin-Madison Small-Scale Waste Management Project, with the following exceptions.

i. The minimum separation distance between the natural ground surface and the anticipated maximum ground water table: 12 inches.

ii. Mound systems may be built over naturally existing soil types per Section R317-4-13 Table 5 or 6 provided the minimum depth of suitable soil is:

(1) between the natural ground surface and bedrock formations or unsuitable soils: 36 inches; or

(2) above soils that have a percolation rate faster than one minute per inch: 24 inches.

iii. The minimum depth of sand media over natural soil: 12 inches.

iv. The maximum slope of natural ground surface: 25%.

v. The separation distances in Section R317-4-13 Table 2 are measured from the toe of the final cover.

vi. The effluent loading rate at the sand media to natural soil interface shall be calculated using Section R317-4-13 Table 5 or 6.

vii. The effluent entering a mound system shall be at levels at or below the defined parameters of non-domestic effluent.

viii. The minimum thickness of aggregate media around the distribution pipes of the absorption system shall be the sum of 6 inches below the distribution pipe, the diameter of the distribution pipe and 2 inches above the distribution pipe or 10 inches, whichever is larger.

ix. The cover may not be less than 6 inches in thickness, and shall provide protection against erosion, frost, storm water infiltration and support vegetative growth and aeration of distribution cell.

x. A minimum of three observation ports shall be located within the mound at each end and the center of the distribution cell.

(1) At least one port shall be installed at the gravel-sand interface, and one port at the sand-soil interface.

b. Mounds shall use pressure distribution.

i. The Utah Guidance for Performance, Application, Design, Operation and Maintenance: Pressure Distribution Systems document and Subsection R317-4-6.14.D.4 shall be used for design requirements.

(1) See Section R317-4-14 Appendix B for pump and control requirements.

3. Packed Bed Media Systems.

Packed bed media systems shall conform to the following:

a. System Design Criteria.

i. Wastewater Design Flows.

(1) For single-family dwellings the design shall be based

on a minimum of 300 gallons per day for two bedrooms and 100 gallons per day for each additional bedroom.

(2) All other flow estimates shall be based on Subsection R317-4-6.4.

(3) Special design considerations shall be given for non-domestic effluent.

ii. Effluent Distribution.

Effluent shall be uniformly distributed over the filter media using pressure distribution.

b. Absorption System Requirements.

Absorption systems shall conform to the following:

i. Siting Conditions.

Packed bed media absorption systems may be sited under the following conditions:

(1) The minimum separation distance between the natural ground surface and the anticipated maximum ground water table: 12 inches.

(2) Packed bed media absorption systems may be built over naturally existing soil types per Section R317-4-13 Table 5 or 6 provided the minimum depth of suitable soils:

(a) above soils that have a percolation rate faster than one minute per inch: 24 inches; and

(b) between the natural ground surface and bedrock formations or unsuitable soils: 36 inches; or

(c) between the natural ground surface and bedrock formations or unsuitable soils: 18 inches based on an evaluation of infiltration rate and hydrogeology from a professional geologist or engineer that is certified at the appropriate level to perform onsite wastewater system design and having sufficient experience in geotechnical engineering based on:

(i) type, extent of fractures, presence of bedding planes, angle of dip;

(ii) hydrogeology of surrounding area; and

(iii) cumulative effect of all existing and future systems within the area for any localized mounding or surfacing that may create a public health hazard or nuisance, description of methods used to determine infiltration rate and evaluations of surfacing or mounding conditions.

(3) A non-chemical disinfection unit, capable of meeting laboratory testing parameters in Table 7.3, and a maintenance schedule consistent to Section R317-4-13 Tables 7.1 and 7.3, shall be used in excessively permeable soils.

(4) Conformance with the minimum setback distances in Section R317-4-13 Table 2, except for the following that require a minimum of 50 feet of separation:

(a) watercourses, lakes, ponds, reservoirs;

(b) non-culinary springs or wells;

(c) foundation drains, curtain drains; or

(d) non-public culinary grouted wells, constructed as required by Title R309.

ii. Sizing Criteria.

The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6 and may be reduced by: 30%.

(1) The use of chambered trenches with a packed bed media system may not receive additional reductions as allowed in Subsection R317-4-6.14.E.1.c.

iii. Separation from Ground Water Table.

The bottom of the absorption system shall have a vertical separation distance of at least 12 inches from the anticipated maximum ground water table.

iv. Observation Ports.

A minimum of two observation ports shall be provided within the absorption area.

v. Drip Irrigation.

Drip irrigation absorption may be used for packed bed media absorption system effluent dispersal based on type of soil and drip irrigation manufacturer's recommendations.

(1) Materials shall be specifically designed and manufactured for onsite wastewater applications.

(2) Non-absorption components shall be installed per Section R317-4-6 and Section R317-4-13 Table 2.

c. Intermittent Sand Filter Systems.

i. Media.

Either sand media or sand fill as described below may be used.

(1) Minimum depth of sand media: 24 inches.

(2) Minimum depth of sand fill: 24 inches.

(a) Effective size: 0.35-0.5 millimeter.

(b) Uniformity coefficient: less than 4.0.

(c) Maximum fines passing through #200 sieve: 1%.

ii. Maximum application rate per day per square foot of media surface area:

(1) Sand media: 1.0 gallons.

(2) Sand fill: 1.2 gallons.

iii. Maximum dose volume through any given orifice for each dosing: 2 gallons.

iv. Effluent entering an intermittent sand filter shall be at levels at or below the defined parameters of non-domestic effluent.

c. Recirculating Sand Filter (RSF) Systems.

i. Media.

(1) Minimum depth of washed sand: 24 inches.

(2) Effective size: 1.5-2.5 millimeter.

(3) Uniformity coefficient: less than 3.0.

(4) Maximum fines passing through #50 sieve: 1%.

ii. Maximum application rate per day per square foot of media surface area: 5 gallons.

d. Recirculating Gravel Filter (RGF) Systems.

i. Media.

(1) Minimum depth of washed gravel: 36 inches.

(2) Effective size: 2.5-5.0 millimeter.

(3) Uniformity Coefficient: less than 2.0.

(4) Maximum fines passing through #16 sieve: 1%.

ii. Maximum application rate per day per square foot of media surface area: 15 gallons.

e. Textile Filter Systems.

i. Media shall be geotextile, AdvanTex, or an approved equal.

ii. Maximum application rate per day per square foot of media surface area: 30 gallons.

f. Peat Filter Systems.

i. Minimum depth of peat media: 24 inches.

ii. Maximum application rate per day per square foot of media surface area: 5 gallons.

4. Sand Lined Trench Systems.

Sand lined trench systems shall conform to the following:

a. Siting Conditions.

i. The minimum depth of suitable soil or saprolite between the sand media in trenches and the anticipated maximum ground water table: 12 inches.

ii. Sand lined trench systems may be built over naturally existing:

(1) soil types 1 through 4; or

(2) soils or saprolite with a percolation rate between 1 and 60 minutes per inch.

iii. The minimum depth of suitable soil or saprolite is:

(1) between the sand media in trenches and bedrock formations or unsuitable soils: 36 inches; or

(2) above soils or saprolite that have a percolation rate faster than one minute per inch: 24 inches.

c. Trench Requirements.

Sand lined trenches shall conform to the requirements applicable to absorption trenches except for the following:

i. Trenches in Suitable Soil.

The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.

ii. Trenches in Saproлите.

The minimum required effective absorption area shall be based on percolation rate using Section R317-4-13 Table 5.

(1) This rate shall be determined by conducting percolation tests. The soil shall be allowed to swell not less than 24 hours or more than 30 hours.

iii. The use of chambered trenches with a sand media system may not receive additional reductions as allowed in Subsection R317-4-6.14.E.1.c.

iv. Width of absorption trench excavations: 36 inches.

v. The entire trench sidewall shall be installed in natural ground. At-Grade system designs are not allowed.

vi. Minimum depth of sand media: 24 inches.

vii. Sand lined trenches with drain media.

(1) Minimum depth of drain media under the pressure lateral distribution pipe: 6 inches.

(2) Minimum depth of drain media over pressure lateral distribution pipe: 2 inches.

(3) Minimum depth of soil cover or saporolite over drain media: 6 inches.

viii. Sand lined trenches with Type A chambers.

(1) Minimum depth of soil cover or saporolite over chambers: 12 inches.

ix. Minimum number of observation ports per trench: 1.

c. Effluent Distribution.

Effluent shall be uniformly distributed over the sand media using pressure distribution.

i. Design shall generally be based on the Utah Guidance for Performance, Application, Design, Operation and Maintenance: Pressure Distribution Systems document.

R317-4-7. Construction and Installation.

7.1. System Installation.

A. Approved Plans.

The installer may not deviate from the approved plans or conditions of the construction permit without the approval of the designer and the reviewing regulatory authority.

B. Installation Restrictions.

A regulatory authority may limit the time period or area in which a system can be installed to ensure that soil conditions, weather, groundwater, or other conditions do not adversely affect the reliability of the system.

C. General Requirements.

1. Prior to installation, all minimum setback distances shall be field verified.

2. All absorption areas shall be protected prior to and during site construction.

3. The regulatory authority may require a temporary barrier around the absorption area, including the replacement area for additional protection prior to and during any site construction. If necessary, a more permanent barrier may be required following construction.

4. All absorption excavations and piping shall be level within a tolerance of plus or minus 1 inch. The overall slope from effluent entry to terminus shall be no more than 4 inches per hundred feet.

5. Absorption system excavations shall be made such that the soil in the bottom and sides of the excavation is not compacted. Strict attention shall be given to the protection of the natural absorption properties of the soil.

6. Absorption systems may not be excavated when the soil is wet enough to smear or compact easily.

7. All smeared or compacted surfaces should be raked to a depth of 1 inch, and loose material removed before the absorption system components are placed in the excavation.

8. Open absorption system excavations shall be protected from surface runoff to prevent the entrance of silt and debris.

9. Absorption systems shall be backfilled with earth that is free from stones 10 inches or more in diameter.

10. Distribution pipes may not be crushed or misaligned during backfilling. When backfilling, the earth shall be mounded slightly above the surface of the ground to allow for settlement and prevent depressions for surface ponding of water.

11. Final grading shall prevent ponding throughout the entire system area and promote surface water runoff.

12. Heavy wheeled equipment may not be driven in or over absorption systems prior to or during construction or backfilling.

D. Building and Effluent Sewer.

1. Pipe, pipe fittings, and similar materials comprising building and effluent sewers shall conform to the applicable standards as outlined in Section R317-4-13 Table 4.

2. Each length of pipe shall be stamped or marked as required by the International Plumbing Code.

3. Where two different sizes or types of pipe are connected, a proper type of fitting or conversion adapter shall be used.

4. All sewers:

a. shall have watertight, root-proof joints; and

b. may not receive any ground water or surface runoff.

5. Pipes shall be installed on a foundation of undisturbed earth, or stabilized earth that is not subject to settling.

E. Tanks.

Tank installation shall conform to the following requirements.

1. All tanks shall be installed on a level, stable base that will not settle.

2. The hole to receive the tank shall be large enough to permit the proper placement of the tank and backfill.

3. Where ground water, rock or other undesirable protruding obstructions are encountered, the bottom of the hole shall be excavated an additional 6 inches, and backfilled with sand, crushed stone, or gravel to the proper grade.

4. Backfill around and over the septic tank shall be placed in such a manner as to prevent undue strain or damage to the tank or connected pipes.

F. Absorption Systems.

1. Cover shall be evenly graded over the entire absorption area.

2. Distribution and Drop Boxes.

a. The inlet and outlet piping shall be sealed watertight to the sidewalls of the box.

b. The box shall be provided with a means of access. Access shall be brought to final grade.

c. The lid of the riser shall be adequate to prevent entrance of water, dirt or other foreign material, but made removable for observation and maintenance of the system.

d. The top of the box shall be at least 6 inches below final grade.

e. The box shall be installed on a level, stable base to ensure against tilting or settling, and to minimize movement from frost action.

f. Unused knock-out holes in boxes shall be sealed watertight.

3. The solid and distribution pipes shall be bedded true to line and grade, uniformly and continuously supported by firm, stable material.

4. No cracked, weakened, modified or otherwise damaged chamber or bundled synthetic aggregate units shall be used in any installation.

G. Pressure Distribution.

1. Installation practices shall follow the approved design.

G. Alternative Systems.

1. At-Grade and Mound Systems.

a. The site shall be cleared of surface vegetation, without removing soil, and scarified to an approximate depth of 6 inches. Any furrows resulting from the scarification shall be

perpendicular to any slope on the site.

- i. Rotary tilling is prohibited for scarification.
 - b. The system may not be installed in wet or moist soil conditions.
 - c. No equipment shall be driven over the scarified area.
 - d. The site shall be graded such that surface water drains away from the system and adjoining area.
2. Packed Bed Media and Sand Lined Trench Systems.
Installation practices shall follow the approved design.

R317-4-8. Final Inspections.

8.1. Final Inspections.

The regulatory authority shall inspect the entire installation before backfilling to determine compliance with this rule. Some components or system types require additional testing or inspection methods as outlined in the following.

A. Tank Water Tightness Testing.

Each tank shall be tested for water tightness prior to backfill.

1. The tanks shall be filled 24 hours before the inspection to allow stabilization of the water level. Considering water absorption by the concrete, there may not be a change in the water level nor any water moving visibly into or out of the tank. Testing shall be supervised by the regulatory authority. Tanks exhibiting obvious defects or leaks may not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

- a. The regulatory authority may allow two piece tanks, with the joint below the water level, to be backfilled up to 3 inches below the joint to provide adequate support to the seam of the tank.

- b. Polyethylene or fiber glass tanks may be backfilled as per manufacturers' recommendations.

2. If ground water elevations inhibit the ability to visibly inspect the exterior of the tank, the tanks may be tested by their ability to exclude water.

B. Distribution and Drop Boxes.

1. Distribution and drop boxes should be installed level and the flow distribution lines shall be checked by filling the boxes with water up to the outlets.

C. Pressure Distribution, Effluent Pumps.

1. Verify the correct operation of the pump, controls, and alarm.

D. Deep Wall Trenches, Seepage Pits.

1. Verify the depth of the trench excavation.

E. At Grade and Mound Systems.

1. Verify the preparation of the original ground before the placement of fill.

2. Verify that the final cover meets requirements.

E. Alternative and Experimental Systems.

1. All additional inspections will be dictated by the complexity of the system and absorption system type as identified by the regulatory authority.

G. Final Approval.

Final approval shall be issued by the regulatory authority prior to operation of the system, and shall include an as-built drawing of the completed system.

R317-4-9. Experimental Systems.

9.1. Administrative Requirements.

A. Where unusual conditions exist, experimental methods of onsite wastewater treatment and dispersal may be employed provided they are acceptable to the division and to the local health department having jurisdiction.

B. When considering proposals for experimental onsite wastewater systems, the division or the local health departments may not be restricted by this rule provided that:

1. the experimental system proposed is attempting to resolve an existing pollution or public health hazard, or when

the experimental system proposal is for new construction, it has been predetermined that an acceptable back-up wastewater system will be installed in event of failure of the experiment;

2. the proposal for an experimental onsite wastewater system shall be in the name of and bear the signature of the person who will own the system; and

3. the person proposing to utilize an experimental system has the responsibility to maintain, correct, or replace the system in event of failure of the experiment.

C. When sufficient, successful experience is established with experimental onsite wastewater systems, the division may designate them as approved alternative onsite wastewater systems.

D. Following this approval of alternative onsite wastewater systems, the division may initiate rulemaking.

9.2 General Requirements.

A. All experimental systems shall be designed, installed and operated under the following conditions:

1. The ground water requirements shall be determined as described in Subsection R317-4-4.1.B.3.

2. The local health department shall advise the owner of the system of the experimental status of that type of system. The advisory shall contain information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements that are all specific to the type of system to be installed.

3. The local health department and the owner shall be provided with sufficient design, installation and operating information to produce a successful, properly operating installation.

4. The local health department is responsible for provision of, or oversight of an approved installation, inspection and maintenance and monitoring program for the systems. Such programs shall include approved procedures for complete periodic maintenance and monitoring of the systems.

5. The local health department may impose more stringent design, installation, operating and monitoring conditions than those required by the division.

6. All failures, repairs or alterations shall be reported to the local health department. All repairs or alterations shall be approved by the local health department.

B. When an experimental wastewater system exists on a property, notification of the existence of that system shall be recorded in the chain of title for that property.

R317-4-10. Wastewater Holding Tanks Administrative, Design, and Installation.

10.1. Administrative Requirements.

A. Requests for the use of wastewater holding tanks shall receive the written approval of the local health department prior to the installation of the holding tank and be administered under an annual operating permit.

B. Wastewater holding tanks are only permitted:

1. where an absorption system for an existing dwelling has failed and installation of a replacement absorption system is not practicable;

2. as a temporary, not to exceed one year, wastewater system for a new dwelling until a connection is made to an approved sewage collection system;

3. as a temporary, not to exceed one year, wastewater system that may include construction sites, labor camps, temporary mass gatherings, or emergency refuge sheltering; or

4. for other essential and unusual situations where both the division and the local health department having jurisdiction concur that the proposed holding tank will be designed, installed and maintained in a manner that provides long term protection of the waters of the state.

- a. Requests for the use of wastewater holding tanks in this

instance shall receive the written approval of both agencies prior to the installation of such devices.

C. Except on those lots recorded and approved for wastewater holding tanks prior to May 21, 1984, wastewater holding tanks are not permitted for use in new housing subdivisions, or commercial, institutional, and recreational developments except in those instances where these devices are part of a specific watershed protection program acceptable to the division and the local health department having jurisdiction.

10.2. General Requirements.

The design, site placement, installation, and maintenance of all wastewater holding tanks shall comply with the following:

A. No wastewater holding tank shall be installed and used unless plans and specifications covering its design and construction have been submitted to and approved by the appropriate regulatory authority.

B. A statement accompanying the application, that a contract with an approved pumper per Rule R317-550 will be obtained stating that the tank will be pumped out periodically at regular intervals or as needed, and contents will be disposed in an approved manner.

C. If authorization is necessary for disposal of wastewater at certain facilities, evidence of such authorization must be submitted for review.

10.3. Basic Plan Information Required.

Depending on the individual site and circumstances, or as determined by the regulatory authority, some or all of the following plan information may be required.

A. Applicant Information.

1. The name, current address, and telephone number of the applicant.

2. Complete address, legal description of the property, or both, to be served by this onsite wastewater system.

B. A plot or site plan showing:

1. direction of North;
2. daily wastewater flow;
3. location and liquid capacity of wastewater holding tank;
4. source and location of water supply;
5. location of water service line and building sewer; and
6. location of streams, ditches, watercourses, ponds, etc., near property.

C. Plan detail of wastewater holding tank and high wastewater level warning device.

D. Relative elevations of:

1. building floor drain;
2. building sewer;
3. invert of inlet for tank;
4. lowest plumbing fixture or drain in building served; and
5. the maximum liquid level of the tank.

E. Statement indicating the maximum anticipated ground water table.

10.4. Construction.

A. The tank shall be constructed of sound and durable material not subject to excessive corrosion and decay and designed to withstand hydrostatic and external loads. All wastewater holding tanks shall comply with the manufacturing materials and construction requirements specified for septic tanks.

B. Construction of the tank shall be such as to assure water tightness and to prevent the entrance of rainwater, surface drainage or ground water.

C. Tanks shall be provided with a maintenance access manhole at the ground surface or above and of at least 18 inches in diameter. Access covers shall have adequate handles and shall be designed and constructed in such a manner that they cannot pass through the access opening, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank.

D. A high water warning device shall be installed on each

tank to indicate when it is within 75% of being full.

1. This device shall be either an audible or a visual alarm.
a. If the latter, it shall be conspicuously mounted.

2. All wiring and mechanical parts of such devices shall be corrosion resistant.

3. All conduit passage ways through the tank top or walls shall be water and vapor tight.

E. No overflow, vent, or other opening shall be provided in the tank other than those described above.

F. The regulatory authority may require that wastewater holding tanks be filled with water and allowed to stand overnight to check for leaks. Tanks exhibiting obvious defects or leaks may not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

G. The building sewer shall comply with this rule.

H. Above ground holding tanks shall be clearly labeled as "Sewage".

10.5. Capacity.

The liquid capacity of the wastewater holding tank shall be based on wastewater flows for the type of dwelling or facility being served as identified in Section R317-4-13 Table 3 and on the desired time period between each pumping.

A. The minimum capacity of underground wastewater holding tanks shall be 1,000 gallons.

10.6. Location.

Any wastewater holding tank must be located:

A. in an area readily accessible to the pump truck in any type of weather that is likely to occur during the period of use;

B. in accordance with the requirements for septic tanks as specified in Section R317-4-13 Table 2; and

C. where it will not tend to float out of the ground due to a high ground water table or a saturated soil condition, since it will be empty or only partially full most of the time. In areas where the ground water table may be high enough to float the tank out of the ground when empty or partially full, adequate ground anchoring procedures shall be provided.

10.7. Management.

A. Wastewater holding tanks shall be pumped periodically, at regular intervals or as needed, and the wastewater contents shall be disposed of in a manner and at a facility meeting the approval of the appropriate regulatory authority.

B. Wastewater holding tanks for seasonal dwellings should be pumped out before each winter season to prevent freezing and possible rupture of the tank.

C. A record of the liquid waste hauler, pumping dates, and amounts pumped shall be maintained and made available to the appropriate regulatory authorities upon request.

D. Wastewater holding tanks shall be checked at frequent intervals by the owner or occupant and if leakage is detected it shall be immediately reported to the regulatory authority.

E. Repairs or replacements shall be conducted under the direction of the regulatory authority.

F. Improper location, construction, operation, or maintenance of a particular holding tank may result in appropriate legal action against the owner by the regulatory authority having jurisdiction.

G. Each holding tank installed under this rule, shall be inspected upon renewal of the operating permit.

R317-4-11. Operation and Maintenance of Systems.

11.1. Purpose.

The purpose of this section is to diminish the possibility of onsite wastewater system failures by informing the owners of required periodic maintenance, servicing, and monitoring. More complex systems will require a higher level of operation and maintenance.

11.2. Conventional Systems.

All conventional systems should be assessed after the first

year of operation, and thereafter at the following minimum frequency.

A. Systems with daily flows between 1 and 3,000 gallons: every three years.

B. Systems with daily flows between 3,001 and 5,000 gallons: every two years.

C. Systems with non-domestic wastewater flows: yearly.

11.3. Pressure Distribution.

A. Each system utilizing pressure distribution shall be inspected as outlined in Section R317-4-13 Tables 7.1 and 7.2.

11.4. Alternative Systems.

A. Each alternative system shall be inspected as outlined in Section R317-4-13 Tables 7.1 and 7.2.

B. Each packed bed media system shall be sampled a minimum of every six months as outlined in Section R317-4-13 Table 7.3.

1. The grab sample shall be taken before discharge to an absorption system.

2. Effluent not meeting the standards of Section R317-4-13 Table 7.3 shall be followed with two successive weekly tests of the same type within a 30-day period from the first exceedance.

3. If two successive samples exceed the minimum standards, the system shall be deemed to be malfunctioning, and shall require further evaluation and a corrective action plan, see Subsection R317-4-3.11.

a. Effluent quality testing shall continue every two weeks until three successive samples are found to be in compliance.

11.4. Tank Servicing.

For recommended tank servicing see Section R317-4-14 Appendix E.

11.5. Distribution and Drop Box Maintenance.

Distribution and drop boxes, if provided, should be inspected and cleaned periodically.

11.6. Repair of a Malfunctioning System.

If corrective action is required see Subsection R317-4-3.11.

R317-4-12. Variance to Design Requirements.

12.1. Reasons for a Variance.

An applicant may request a variance from requirements of this rule only when a property has been deemed not feasible for the design or construction of an onsite wastewater system. A variance may not be granted for separation distances from public culinary water sources.

12.2. Conditions for a Variance.

A variance will not be approved unless the applicant demonstrates that all of the following conditions are met:

A. An onsite wastewater system consistent with this rule and local health department requirements cannot be constructed and a connection to a public or community-based sewerage system is not available or practicable. This determination will be made by the local health department.

B. Wastewater from the proposed onsite wastewater system will not:

1. contaminate ground water or surface water; and
2. surface or move off site before it is adequately treated to protect public health and the environment.

C. The proposed system will result in equal or greater protection of public health and the environment than is required by meeting the minimum standards and intent of this rule.

D. Adjacent properties, including the current and reasonably anticipated uses of adjacent properties, will not be jeopardized if the proposed system is constructed, operated, and maintained.

12.3. Procedure for Requesting a Variance.

A. A variance request shall include the information and documentation described in Subsection R317-4-12.5.

B. The local health department shall review the variance

request and prepare a written determination outlining the conditions of approval or denial of the request. The review shall identify the factors considered in the process and specify the basis for the determination.

12.4. Variance Approvals.

A. A variance will not be approved unless the applicant demonstrates that all of the conditions in Subsection R317-4-12.2 are met.

B. A local health department may not issue an approval or an operating permit for an onsite wastewater system that does not comply with this rule unless a variance has been approved.

C. Notice of the conditions shall be recorded in the chain of title for the property in the office of the county recorder. The notice shall include:

1. the description of the system and variance conditions;
2. operation and maintenance requirements;
3. permission for the regulatory authority to access the property for the purpose of inspection and monitoring of the system; and
4. owner responsibilities to correct, repair, or replace the system at the direction of the regulatory agency.

12.5. Application Requirements.

The variance application shall include all information and documentation necessary to ensure that the standards in Subsection R317-4-12.2 will be met.

A. As appropriate, the information required under this section shall be submitted in a report by a professional engineer or a professional geologist that is certified at the appropriate level to perform onsite wastewater system design. An engineer or geologist who submits a report shall be licensed to practice in Utah and shall have sufficient experience and expertise to make the determinations in the report. Any such report shall include the engineer's or geologist's name and registration number, and a summary of qualifications. The report shall be imprinted with the engineer's or geologist's registration seal and signature. Information shall include at least the following.

1. Information demonstrating that connection to a public or community-based sewerage system is not available or practicable.
2. Technical justification and appropriate engineering, geotechnical, hydrogeologic, and reliability information justifying the request for a variance and how the conditions in 12.2 will be met.
3. A detailed description of the proposed system, including a detailed explanation of wastewater treatment technologies allowed by this rule that have been considered for use, and that will provide the best available treatment.
4. A statement of alternatives considered in lieu of a variance.
5. An operation, maintenance, and troubleshooting plan to keep the installed system operating as described in the application.
6. Documentation provided by the local health department that the adjoining land owners have been notified and provided opportunity for comment on the proposed variance.

R317-4-13. Tables.

TABLE 1.1

Minimum Lot Size (a) by Soil Type and Culinary Water Source		
Soil Type	Public Water Supply	Non-public Water Supply (b)
1	12,000 sq. ft.	1 Acre
2	15,000 sq. ft.	1.25 Acres
3	18,000 sq. ft.	1.5 Acres
4	20,000 sq. ft.	1.75 Acres
5 (c)	20,000 sq. ft. (c)	1.75 Acres (c)

TABLE 1.2

Soil Type	Soil Type Key (d)			Replacement Areas			
	Soil Texture (e)	Soil Structure	Percolation Rate (minutes per inch)	Public Culinary Water Sources	(c)	100 (c)	100 (c)
1	Coarse Sand, Sand, Loamy Coarse Sand, Loamy Sand	Single Grain	1-10	Individual or Non-public Culinary Water Sources (d)	25	50	100 (e)
2	Fine Sand, Very Fine Sand, Loamy Fine Sand, Loamy Very Fine Sand	Single Grain	11-20	Culinary Water Supply Line	(f)	10 (f)	10 (f)
3	Coarse Sandy Loam, Sandy Loam	Prismatic, Blocky, Granular	21-40	Non-culinary Well or Spring	10	25	100
4	Coarse Sandy Loam, Sandy Loam	Massive, Platy	41-60	Lake, Pond, Reservoir (a)	10	25	100
5	Fine Sandy Loam, Very Fine Sandy Loam, Loam, Silt Loam	Massive, Platy	61-120	Watercourse (live or ephemeral stream, river, subsurface drain, canal, storm water drainage systems, etc.)		25	100 (g)
	Sandy Clay Loam, Clay Loam, Silty Clay Loam	Massive		Building Foundation Without foundation drain		5	5 (h)
	Sandy Clay Loam, Clay Loam, Silty Clay Loam, Sandy Clay, Clay, Silty Clay, Silt	Prismatic, Blocky, Granular		With foundation drain		10	100 (i)
6 (f)	Sandy Clay Loam, Clay Loam, Silty Clay Loam	Platy	>120	Curtain drains	10	10	100 (i)
	Sandy Clay, Clay, Silty Clay, Silt	Massive, Platy		Dry washes, gulches, and gullies		25	50
				Swimming pool, below ground	3	10	25
				Dry wells, catch basins		5	25
				Down slopes that exceed 35%. This includes all natural slopes or escarpments and any manmade cuts, retaining walls, or embankments.		10	50 (j)
				Property line	5	5	5

NOTES

- (a) Excluding public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building lot for a single-family dwelling. These minimum lot size requirements do not apply to building lots that have received final local health department approval prior to the adoption of this rule.
- Lots that are part of subdivisions that have received final local health department approval prior to the adoption of this rule are only exempt from the minimum lot size requirements if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for approved lots, the minimum lot size requirements are applicable if compelling or countervailing public health interests would necessitate application of these more stringent requirements. The shape of the lot shall also be acceptable to the regulatory authority.
- (b) See the separation requirements in Section R317-4-13 Table 2.
- (c) Packed bed media systems are required for this soil type.
- (d) When there is a substantial discrepancy between the percolation rate and the soil classification, it shall be resolved to the satisfaction of the regulatory authority, or the soil type requiring the largest lot shall be used.
- (e) See the USDA soil classification system for a more detailed description.
- (f) These soils are unsuitable for any absorption system.

NOTES

- (a) All distances are from edge to edge. Where surface waters are involved, the distance shall be measured from the high water line.
- (b) See Subsection R317-4-6.14 for setback requirements.
- (c) All distances shall be consistent with Rule R309-600.
- (d) Compliance with separation requirements does not guarantee acceptable water quality in every instance. Where geological or other conditions warrant, greater distances may be required by the regulatory authority.
- (e) For ungrouted wells and springs the distance shall be 200 feet. Although this distance shall be generally adhered to as the minimum required separation distance, exceptions may be approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an absorption system closer than 200 feet to an individual or nonpublic ungrouted well or spring must submit a report to the regulatory authority that considers the above items. In no case shall the regulatory authority grant approval for an onsite wastewater system to be closer than 100 feet from an ungrouted well or a spring.
- (f) If the water supply line is for a public water supply, the separation distance shall comply with the requirements of Rule R309-550. No culinary water service line shall pass through any portion of an absorption area.
- (g) Lining or enclosing watercourses with an acceptable impervious material may permit a reduction in the separation requirement. In situations where the bottom of a canal or watercourse is at a higher elevation than the ground in which the absorption system is to be installed,

TABLE 2

Minimum Separation Distances in Feet (a)

Item Requiring Setback	From Building Sewers and Effluent Sewers	From Septic Pump, and Other Tanks	From Absorption Area and Replacement Area
Absorption and		5	(b)

- a reduction in the distance requirement may be justified, but each case shall be decided on its own merits by the regulatory authority.
- (h) Horizontal setback between a deep wall trench or seepage pit and a foundation of any building is at least 20 feet.
 - (i) The regulatory authority may reduce the separation distance, if it can be shown that the effluent will not enter the drain, but each case must be decided on its own merits by the regulatory authority. In no case shall the regulatory authority grant approval for an absorption area to be closer than 20 feet.
 - (j) This setback may be reduced if a reference line originating at the bottom of the distribution pipe, sloped at 35% below horizontal, will not daylight or intersect the ground surface.

Mobile Home Parks	400 per unit
Movie Theaters	
a. auditorium	5 per seat
b. drive-in	10 per car space
Nursing Homes	200 per bed space
Office Buildings and Business Establishments, not including food service, per eight hour shift	15 per employee
Picnic Parks, toilet wastes only	5 per person
Recreational Vehicle Parks	
a. temporary or transient with no sewer connections	50 per space
b. temporary or transient with sewer connections	125 per space
Recreational Vehicle Dump Station, per self-contained vehicle	50
Schools	
a. boarding	75 per person
b. day, without cafeteria, gymnasiums or showers	15 per person
c. day, with cafeteria, but no gymnasiums and showers	20 per person
d. day, with cafeteria, gymnasium and showers	25 per person
Service Stations, per day, per pump	250
Skating Rink, Dance Halls, Ski Areas, etc.	10 per person
Stores, including Convenience Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses, Using Maximum Bather Load	10 per person
Taverns, Bars, Cocktail lounges with No Food Service	20 per seat
Visitor Centers	5 per visitor

TABLE 3

Estimated Flow Rates of Wastewater (a)

Type of Establishment	Gallons per Day
Airports	
a. per passenger	3
b. per employee	15
Boarding and Rooming Houses	
a. for each resident boarder and employee	50 per person
b. additional for each nonresident boarder	10 per person
Bowling Alleys, not including food service	85 per alley
Camps	
a. developed with flush toilets and showers	30 per person
b. developed with flush toilets	20 per person
c. developed with no flush toilets	5 per person
Churches, per person	5
Condominiums, Multiple Family Dwellings, or Apartments	150 per bedroom
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds	1 per person
Fire Stations	
a. with full-time employees and food preparation	70 per person
b. with no full-time employees and no food preparation	5 per person
Food Service Establishment (b)	
a. ordinary restaurants, not 24 hour service	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served, includes toilet and kitchen wastes	10
Gyms	
a. participant and staff member	25 per person
b. spectator	4 per person
Hairdresser, per chair	65
Highway Rest Stops, improved with restroom facilities	5 per vehicle
Hospitals	250 per bed space
Hotels, Motels, and Resorts	125 per unit
Industrial Buildings, exclusive of industrial waste	
a. with showers, per 8 hour shift	35 per person
b. with no showers, per 8 hour shift	15 per person
Labor or Construction Camps	50 per person
Launderette	580 per washer

NOTES

- (a) When more than one use will occur, the multiple use shall be considered in determining total flow. Small industrial plants maintaining a cafeteria or showers and club houses or motels maintaining swimming pools or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established flows from known or similar installations.
- (b) No commercial food waste disposal unit shall be connected to an onsite wastewater system unless first approved by the regulatory authority.

TABLE 4

Minimum Standards for Building Sewer, Effluent Sewer, and Distribution Pipe Materials (a)

Acceptable Building Sewer and Effluent Sewer Materials	
Type of Pipe	Minimum Standard
Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	ASTM (b) D-2680 (c), D-2751, F-628
Polyvinyl Chloride (PVC) Schedule 40	ASTM D-2665, D-3033, D-3034
Acceptable Distribution Pipe Materials	
Type of Pipe	Minimum Standard
ABS Schedule 40	ASTM D-2661, D-2751
Polyethylene (PE), Smooth Wall	ASTM D-3350
PVC Schedule 40	ASTM D-2665, D-3033, D-3034
PVC	ASTM D-2729 (d)

NOTES

- (a) Each length of building sewer, effluent sewer, and distribution pipe shall be stamped or marked.

- (b) American Society for Testing and Materials.
- (c) For domestic wastewater only, free from industrial wastes.
- (d) Although perforated PVC, ASTM D-2729 is approved for absorption system application, the solid-wall version of this pipe is not approved for any application.

TABLE 5

Minimum Hydraulic Loading Rates for Percolation Testing

Percolation Rate (Minutes per Inch)	Absorption Systems Hydraulic Loading Rates (a)	Absorption Beds and Mound Systems Hydraulic Loading Rates (b)
	(gal/day/ft ²) (c) (d) (e)	(gal/day/ft ²) (c) (d) (f)
0-10 (g)	0.90	0.45
11-20	0.70	0.35
21-30	0.60	0.3
31-40	0.55	0.27
41-50	0.50	0.25 (h)
51-60	0.45	0.22 (h)
61-90 (i)	0.40	(j)
91-120 (i)	0.35	(j)

NOTES

- (a) The following formula may be used in place of the values in this table: $q=2.35$ divided by the square root of the percolation rate and then add 0.15 where q is the hydraulic loading rate. For percolation rates faster than 1 minute per inch, 1 minute per inch shall be used in the formula.
- (b) The following formula may be used in place of the values in this table: $q=1.2$ divided by the square root of the percolation rate and then add 0.08 where q is the hydraulic loading rate. For percolation rates faster than 1 minute per inch, 1 minute per inch shall be used in the formula.
- (c) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day shown in Section R317-4-13 Table 3, divided by the hydraulic loading rate within the applicable percolation rate category.
- (d) For non-residential facilities, if a garbage grinder is not used, the absorption area may be reduced by 10% (0.9 multiplier). If any automatic sequence washer is not used, the absorption area may be reduced by 30% (0.7 multiplier). If both of these appliances are not used, the absorption area may be reduced by 40% (0.6 multiplier).
- (e) For non-residential facilities, a minimum of 150 square feet of trench bottom or sidewall absorption area shall be provided.
- (f) For non-residential facilities, a minimum of 300 square feet of absorption area shall be provided.
- (g) Soils with a percolation rate faster than 1 minute per inch are only acceptable with the use of an alternative packed bed media system with a disinfection unit.
- (h) Not suitable for absorption beds.
- (i) Acceptable for alternative packed bed media systems only.
- (j) Not suitable for absorption beds or mounds.

TABLE 6

Minimum Hydraulic Loading Rates for Soil Classification

Texture	Structure	Absorption Systems Hydraulic Loading Rate (gal/ft ² /day)	Absorption Beds and Mound Systems Hydraulic Loading Rate (gal/ft ² /day)
		(a) (b) (c)	(a) (b) (d)
Coarse sand, sand, loamy coarse sand, loamy sand	Single grain	0.9 (e)	0.45 (e)
Fine sand, very fine sand, loamy fine sand, loamy very fine sand	Single grain	0.7	0.35

Coarse sandy loam	Massive Platy Prismatic, blocky, granular	0.45 0.5 0.65	0.22 (f) 0.25 (f) 0.32
Fine sandy loam, very fine sandy loam	Massive Platy Prismatic, blocky, granular	0.4 0.35 0.5	(g) (g) 0.25 (f)
Loam	Massive Platy Prismatic, blocky, granular	0.4 (e) 0.5	(g) (g) 0.25 (f)
Silt loam	Massive Platy Prismatic, blocky, granular	(e) (e) 0.45	(g) (g) 0.22 (f)
Sandy clay loam, clay loam, silty clay loam	Massive Platy Prismatic, blocky, granular	(e) (h) (i) 0.4 (e) (h)	(g) (i) (g)
Silt, silty clay, sandy clay, clay	Massive Platy Prismatic, blocky, granular	(i) (i) 0.35 (e) (h)	(i) (i) (g)

NOTES

- (a) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day, using Section R317-4-13 Table 3, divided by the hydraulic loading rate within the applicable soil texture and structure category.
- (b) For non-residential facilities, if a garbage grinder is not used, the absorption area may be reduced by 10% (0.9 multiplier). If any automatic sequence washer is not used, the absorption area may be reduced by 30% (0.7 multiplier). If both of these appliances are not used, the absorption area may be reduced by 40% (0.6 multiplier).
- (c) For non-residential facilities, a minimum of 150 square feet of trench bottom or sidewall absorption area shall be provided.
- (d) For non-residential facilities, a minimum of 300 square feet of absorption area shall be provided. (e) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse grained porous soils, and the percentage of sand and structure in fine grained soils. Percolation testing shall be used for further evaluation.
- (f) Not suitable for absorption beds.
- (g) Not suitable for absorption beds or mounds.
- (h) These soils may be permissible for packed bed media absorption systems only.
- (i) These soils are unsuitable for any absorption system.

TABLE 7: Minimum Inspection Frequency, Components, and Effluent Sampling Parameters

TABLE 7.1

Minimum Inspection Frequency (a)

Type of System	Annual	Semi-annual
Pressure Distribution	X	
At-Grade (first 5 years only)	X	
Mound	X	
Packed Bed Media		X
Sand Lined Trench	X	
Holding Tank	X	
Experimental System		X

NOTES (a) Or more frequently as directed by the regulatory authority.

TABLE 7.2

Components (a)

Type of System	Septic Tank and Other Tanks	Distribution or Drop Boxes (if accessible)	Pumps, Float Settings, Control Panel	Pressure Laterals, Absorption Area	Disinfection Unit (c)
Pressure Distribution	X		X	X	
At-Grade Mound	X	X	X	X	
Packed Bed Media	X	X	X	X	X
Sand Lined Trench	X		X	X	
Holding Tank (b)	X		X		
Experimental	X	X	X	X	

NOTES

- (a) Inspect other components as directed by the regulatory authority.
- (b) Including pumping records.
- (c) Required for absorption systems installed in excessively permeable soils, or as directed by the regulatory authority.

TABLE 7.3

Effluent Sampling Parameters
 Packed Bed Media System Routine Sampling Parameters
 Must sample Turbidity, or BOD5 and TSS.

Field Testing	Laboratory Testing			
Turbidity	BOD5	TSS	COD (a)	E. coli
≤20 NTUs	≤25 mg/l	≤25 mg/l	≤75 mg/l	<126/100 ml (b)

NOTES

- (a) Chemical oxygen demand (COD) may be used in place of BOD5.
- (b) E. coli testing required when a disinfection unit is installed.

R317-4-14. Appendices.

Appendix A. Septic Tank Construction.

1.1. Plans for Tanks Required.

Plans for all septic tanks and underground holding tanks shall be submitted to the division for approval. Such plans shall show all dimensions, capacities, reinforcing, maximum depth of soil cover, and such other pertinent data as may be required. All tanks shall conform to the design drawing and shall be constructed under strict, controlled supervision by the manufacturer.

A. Precast Reinforced Concrete Tanks.

1. The walls and base of precast tanks shall be securely bonded together and the walls shall be of monolithic or keyed construction.

2. The sidewalls and bottom of such tanks shall be at least 3 inches in thickness.

3. The top shall have a minimum thickness of 4 inches.

4. Such tanks shall have reinforcing of at least 6 inch x 6 inch No. 6, welded wire fabric, or equivalent. Exceptions to this reinforcing requirement may be considered by the division based on an evaluation of acceptable structural engineering data submitted by the manufacturer.

5. All concrete used in precast tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodged to minimize honeycombing and to assure water tightness.

6. Precast sections shall be set evenly in a full bed of sealant. If grout is used it shall consist of two parts plaster sand to one part cement with sufficient water added to make the grout flow under its own weight.

7. Excessively mortared joints should be trimmed flush.

8. The inside and outside of each mortar joint shall be sealed with a waterproof bituminous sealing compound.

9. For the purpose of early reuse of forms, the concrete may be steam cured. Other curing by means of water spraying or a membrane curing compound may be used and shall comply

to best acceptable methods as outlined in Guide to Curing Concrete, ACI308R-01, by American Concrete Institute, Farmington Hills, Michigan.

B. Poured-In-Place Concrete Septic Tanks.

1. The top of poured-in-place septic tanks with a liquid capacity of 1,000 to 1,250 gallons shall be a minimum of 4 inches thick, and reinforced with 3/8 inch reinforcing rods 12 inches on center both ways, or equivalent.

2. The top of tanks with a liquid capacity of greater than 1,250 gallons shall be a minimum of 6 inches thick, and reinforced with 3/8 inch reinforcing rods 8 inches on center both ways, or equivalent.

3. The walls and floor shall be a minimum of 6 inches thick. The walls shall be reinforced with 3/8 inch reinforcing rods 8 inches on center both ways, or equivalent. Inspections by the regulatory authority may be required of the tank reinforcing steel before any concrete is poured.

4. A 6 inch water stop shall be used at the wall-floor juncture to ensure water tightness.

5. All concrete used in poured-in-place tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodged to minimize honeycombing and to ensure water tightness.

6. Curing of concrete shall comply with the requirements in Subsection R317-4-14 Appendix A.1.2.

C. Fiberglass Tanks.

1. Fiberglass tanks shall comply with one of the following criteria for acceptance.

a. The Interim Guide Criteria for Glass-Fiber-Reinforced Polyester Septic Tanks, International Association of Plumbing and Mechanical Officials Z1000-2007. The identifying seal of the International Association of Plumbing and Mechanical Officials shall be permanently embossed in the fiberglass as evidence of compliance.

b. Manufactured to meet the structural requirements of Underwriters Laboratories (UL) Standard 1316.

c. Professionally engineered plans demonstrating compliance to tank configuration requirements of this rule including acceptable structural calculations or other pertinent data as may be required.

2. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the division.

3. The tank shall be installed in accordance with the manufacturer's recommendations.

D. Polyethylene Tanks.

1. Polyethylene tanks shall comply with the criteria for acceptance established in Prefabricated Septic Tanks and Wastewater Holding Tanks, Can3-B66-10 by the Canadian Standards Association, Ontario, Canada.

2. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the division.

3. The tank shall be installed in accordance with the manufacturer's recommendations.

1.2. Identifying Marks.

A. All prefabricated or precast tanks that are commercially manufactured shall be plainly, legibly, and permanently marked or stamped with:

1. the manufacturer's name and address, or nationally registered trademark;

2. the liquid capacity of the tank in gallons on the exterior at the outlet end within 6 inches of the top of the wall; and

3. the inlet and outlet of all such tanks shall be plainly marked as "IN" or "OUT" respectively.

1.3. Inlets and Outlets.

Inlets and outlets of tanks or compartments thereof shall meet the minimum diameter requirements for building sewers.

A. Only one inlet or outlet is allowed, unless

preauthorized by the regulatory authority.

B. Inlets and outlets shall be located on opposite ends of the tank.

1. The invert of flow line of the inlet shall be located at least 2 inches, above the invert of the outlet to allow for momentary rise in liquid level during discharge to the tank.

2. Approved tanks with offset inlets may be used when approved by the regulatory authority.

C. All inlets and outlets shall have a baffle or sanitary tee.

1. An inlet baffle or sanitary tee of wide sweep design shall be provided to divert the incoming wastewater downward. This baffle or tee is to penetrate at least 6 inches below the liquid level, but the penetration is not to be greater than that allowed for the outlet device.

2. For tanks with vertical sides, outlet baffles or sanitary tees shall extend below the liquid surface a distance equal to approximately 40% of the liquid depth. For horizontal cylindrical tanks and tanks of other shapes, that distance shall be reduced to approximately 35% of the liquid depth.

3. All baffles shall be constructed from sidewall to sidewall or shall be designed as a conduit.

4. All sanitary tees shall be permanently fastened in a vertical, rigid position.

D. Inlet and outlet pipe connections to the septic tank shall be sealed and adhere to the tank and pipes to form watertight connections with a bonding compound or sealing rings.

E. Inlet and outlet devices may not include any design features preventing free venting of gases generated in the tank or absorption system back through the roof vent in the building plumbing system. The top of the baffles or sanitary tees shall extend at least 6 inches above the liquid level in order to provide scum storage, but no closer than 1 inch to the inside top of the tank.

1.4. Liquid Depth of Tanks.

Liquid depth of tanks shall be at least 30 inches. Depth in excess of 72 inches may only be considered in calculating liquid volume required in Subsection R317-4-6.6 if the tank length is at least two times the liquid depth.

1.5. Burial Depth.

The maximum burial depth shall be stated on the plans submitted.

1.6. Tank Compartments.

Septic tanks may be divided into compartments provided they meet the following:

A. The volume of the first compartment shall equal or exceed two-thirds of the total required septic tank volume;

B. No compartment shall have an inside horizontal dimension less than 24 inches;

C. Inlets and outlets shall be designed as specified for tanks, except that when a partition wall is used to form a multi-compartment tank, an opening in the partition may serve for flow between compartments provided the minimum dimension of the opening is 4 inches, the cross-sectional area is not less than that of a 6 inch diameter pipe (28.3 square inches), and the mid-point is below the liquid surface a distance approximately equal to 40% of the liquid depth of the tank.

1.7. Scum Storage.

Scum storage volume shall consist of 15% or more of the required liquid capacity of the tank and shall be provided in the space between the liquid surface and the top of inlet and outlet devices.

1.8. Access to Tank Interior.

Adequate access to the tank shall be provided to facilitate inspection, servicing and maintenance, and shall have no structure or other obstruction placed over it and shall conform to the following requirements:

A. Access to each compartment of the tank shall be provided through properly placed manhole openings not less than 18 inches in diameter, in minimum horizontal dimension

or by means of an easily removable lid section.

B. All access covers shall be designed and constructed in such a manner that they cannot pass through the access openings, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank. Concrete access covers for manhole openings shall have adequate handles.

C. Access to inlet and outlet devices shall be provided through properly spaced openings not less than 12 inches in minimum horizontal dimension or by means of an easily removable lid section.

Appendix B. Pressure Distribution, Pumps, Controls, and Alarms.

1.1. Design.

The design shall generally be based on the Utah Guidance for Performance, Application, Design, Operation and Maintenance: Pressure Distribution Systems document with the following exceptions:

A. Design and equipment shall emphasize ease of maintenance, longevity, and reliability of components and shall be proven suitable by operational experience, test, or analysis, acceptable to the regulatory authority.

B. Electrical disconnects shall be provided that are appropriate for the installation and shall have gas-tight junction boxes or splices. Electrical components used in onsite wastewater systems shall comply with applicable requirements of the State of Utah Electrical Code.

C. All components shall be constructed and installed to facilitate ease of service without having to alter any other part.

1.2. Pumps, Controls, and Alarms.

Prior to final approval for operation, all pumps, controls and related apparatus shall be field tested and found to operate as designed.

A. When duplex pump system is designed, controls shall be provided that an alarm will signal when one of the pumps malfunctions.

B. Where multiple pumps are operated in series, controls shall be installed to prevent the operation of a pump or pumps preceding a station that experiences a high level alarm event.

C. Controls shall be capable of controlling all functions incorporated or required in the design of the system.

1. The control panel for all pressure distribution systems shall include a pump run-time hour meter and a pump event counter or other acceptable flow measurement method.

2. The control panel shall be installed within sight of the access risers.

a. Other locations may be approved by the regulatory authority.

3. Supporting hydraulic calculations and pump curve analysis shall be submitted to the regulatory authority with the design.

Appendix C. Soil Exploration Pits, Soil Logs, Soil Evaluations.

1.1. Soil Exploration Pit Construction.

Soil conditions shall be obtained from soil exploration pit(s) dug to a depth of 10 feet in the absorption area, or to the ground water table if it is shallower than 10 feet below ground surface. In the event that absorption system excavations will be deeper than 6 feet, soil exploration pits shall extend to a depth of at least 4 feet below the bottom of the proposed absorption system excavation.

A. Soil exploration pits shall be constructed in a manner to reduce potential for physical injury. One end of each pit should be sloped gently or "stair-stepped" to permit easy entry if necessary.

1.2. Soil Logs.

A. The soil log shall contain the following information.

1. A signed statement certifying that the logs were evaluated and recorded in accordance with this rule.

2. The names of all qualified individuals per Rule R317-11 conducting the tests.

3. The location of the property.

4. The location of the soil exploration pit on the property.

5. The date of the log.

6. A description and depths of the soil horizons throughout the soil exploration pit to include:

a. soil texture and structure using the USDA system of classification;

b. estimated volume percentage of coarse fragments defined as:

i. "Gravel" means a rock fragment from 0.1 inches to 3 inches in diameter;

ii. "Cobble" means rock fragment from 3 inches to 10 inches in diameter;

iii. "Stone" means a rock fragment greater than 10 inches in diameter;

c. the presence and abundance of mottling defined as:

i. "Few" when less than 2% of the exposed surface is occupied by mottles;

ii. "Common" when from 2% to 20% of the exposed surface is occupied by mottles; and

iii. "Many" when more than 20% of the exposed surface is occupied by mottles;

d. depth to groundwater or bedrock, if encountered, and maximum anticipated groundwater table; and

e. other pertinent information.

1.3. Soil Evaluation.

Soils shall be evaluated using the USDA Soil Texture Classification method.

A. The soil horizon with the lowest loading rate shall be used in calculating the required absorption area.

Appendix D. Percolation Method.

1.1. Percolation Test Requirements.

Percolation tests shall be completed by an individual certified per Rule R317-11 and shall be conducted in accordance with the instructions in this appendix.

A. Typical Areas.

When percolation tests are conducted, such tests shall be conducted at points and elevations selected as typical of the area in which the absorption system will be located.

B. Percolation Test Certificate.

Percolation test results shall be submitted on a signed "Percolation Test Certificate". The test certificate shall contain the following:

1. A signed statement certifying that the tests were conducted in accordance with this rule.

2. The names of all individuals per Rule R317-11 conducting the tests.

3. The location of the property.

4. The location of the percolation tests on the property.

5. The depth to the bottom of the percolation test hole from the existing grade.

6. The final stabilized percolation rate of each test in minutes per inch.

7. The date of the tests.

8. Other pertinent information.

C. Specific Requirements.

Percolation tests shall be conducted at the owner's expense and in accordance with the following:

1. Conditions Prohibited for Test Holes.

Percolation tests may not be conducted in test holes that extend into ground water, bedrock, or frozen ground. Where shrink-swell clays, fissured soil formations, or saprolite is encountered, tests shall be made under the direction of the regulatory authority.

2. Soil Exploration Pit Prerequisite to Percolation Tests.

Since the appropriate percolation test depth depends on the soil conditions at a specific site, the percolation test shall be

conducted only after the soil exploration pit has been dug and examined for suitable and porous strata and ground water table information. Percolation test results should be related to the soil conditions found.

3. Test Holes to Commence in Specially Prepared Excavations.

All percolation test holes should commence in specially prepared larger excavations, preferably made with a backhoe, of sufficient size that extend to a depth approximately 6 inches above the strata to be tested.

4. Type, Depth, and Dimensions of Test Holes.

Test holes shall be dug or bored, preferably with hand tools such as shovels or augers, etc., and shall have horizontal dimensions ranging from 4 to 18 inches, preferably 8 to 12 inches. The vertical sides shall be at least 12 inches deep, terminating in the soil at an elevation 6 inches below the bottom of the proposed onsite wastewater system. In testing individual soil strata for deep wall trenches and seepage pits, the percolation test hole shall be located entirely within the strata to be tested, if possible.

5. Preparation of Percolation Test Hole.

Carefully remove any smeared soil surfaces to provide an open, natural soil interface into that water may percolate. Remove all loose soil from the bottom of the hole. Add 2 to 3 inches of clean pea gravel to protect the bottom from scouring or sealing with sediment when water is added. Caving or sloughing in some test holes can be prevented by placing in the test hole a wire cylinder or perforated pipe surrounded by clean pea gravel.

6. Saturation and Swelling of the Soil.

It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a relatively short period of time. Swelling is a soil volume increase caused by intrusion of water into the individual soil particles. This is a slow process, especially in clay-type soil, and is the reason for requiring a prolonged swelling period.

7. Placing Water in Test Holes.

Water should be placed carefully into the test holes by means of a small diameter siphon hose or other suitable method to prevent washing down the side of the hole.

8. Percolation Rate Measurement, General.

Necessary equipment should consist of a tape measure with at least 1/16 inch calibration or float gauge, and a time piece or other suitable equipment. All measurements shall be made from a fixed reference point near the top of the test hole to the surface of the water.

9. Percolation Test Procedure.

The hole shall be carefully filled with clear water and a minimum depth of 12 inches shall be maintained above the gravel for at least a four hour period by refilling whenever necessary. Water remaining in the hole after four hours may not be removed. Immediately following the saturation period, the soil shall be allowed to swell not less than 16 hours or more than 30 hours. Immediately following the soil swelling period, the percolation rate measurements shall be made as follows:

a. Any soil that has sloughed into the hole shall be removed and water shall be adjusted to 6 inches over the gravel.

b. Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of four hours, unless two successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

i. If 6 inches of water seeps away in less than 15 minutes, a shorter time interval of 5 minutes between measurements may be used.

ii. If 6 inches of water seeps away in less than 30 minutes, a shorter time interval of 15 minutes between measurements

may be used.

c. The hole shall be filled with 6 inches of clear water above the gravel after each time interval.

d. In no case shall the water depth exceed 6 inches above the gravel.

e. The final water level drop shall be used to calculate the percolation rate.

i. If no stabilized rate is achieved, the smallest drop shall be used to make this calculation.

f. Precautions shall be taken to prohibit water or soil from freezing during the test procedure.

10. Test Procedure for Type 1 and Type 2 Soils.

The hole shall be carefully filled with clear water to a minimum depth of 12 inches over the gravel and the time for this amount of water to seep away shall be determined. The procedure shall be repeated and if the water from the second filling of the hole at least 12 inches above the gravel seeps away in 10 minutes or less, the test may proceed immediately as follows:

a. Water shall be added to a point not more than 6 inches above the gravel.

b. Thereupon, from the fixed reference point, water levels shall be measured at 10 minute intervals for a period of one hour.

i. If 6 inches of water seeps away in less than 10 minutes, a shorter time interval of 5 minutes between measurements may be used.

c. The hole shall be filled with 6 inches of clear water above the gravel after each time interval.

d. In no case shall the water depth exceed 6 inches above the gravel.

e. The final water level drop shall be used to calculate the percolation rate.

i. If no stabilized rate is achieved, the smallest drop shall be used to make this calculation.

11. Calculation of Percolation Rate.

The percolation rate is equal to the time elapsed in minutes for the water column to drop, divided by the distance the water dropped in inches and fractions thereof.

12. Using Percolation Rate to Determine Absorption Area.

The minimum or slowest percolation rate shall be used in calculating the required absorption area.

Appendix E. Tank Operation and Maintenance.

1.1. Maintenance of Septic Tanks.

A. Septic tanks shall be emptied before too much sludge or scum is allowed to accumulate and seriously reduce the tank volume settling depth. If either the settled solids or floating scum layer accumulate too close to the bottom of the outlet baffle or bottom of the sanitary tee pipe in the tank, solid particles will overflow into the absorption system and eventually clog the soil and ruin its absorption capacity.

B. A septic tank that receives normal loading should be inspected as indicated in Section R317-4-11 to determine if it needs emptying. Although there are wide differences in the rate that sludge and scum accumulate in tanks, a septic tank for a private residence will generally require emptying every three to five years. Actual measurement of scum and sludge accumulation is the only sure way to determine when a tank needs to be emptied. Experience for a particular system may indicate the desirability of longer or shorter intervals between inspections.

C. The tank should be completely emptied if either the bottom of the floating scum mat is within 3 inches of the bottom of the outlet baffle or tee or the sludge level has built up to approximately 12 inches from the bottom of the outlet baffle or tee, or the scum and sludge layers together equal 40% or more of the tank volume. All scum and solids should be washed out and removed from the tank.

D. If multiple tanks or tanks with multiple compartments

are provided, care should be taken to ensure that each tank or compartment is inspected and emptied.

E. Septic tank wastes contain disease causing organisms and shall be disposed of only in areas and in a manner that is acceptable to local health authorities and consistent with state rules.

F. Immediate replacement of damaged inlet or outlet fittings in the septic tank is essential for effective operation of the system.

G. Effluent screens or filters.

Remove the filter in a manner that prevents solids from passing to the absorption system. Wash the filter over the inlet side of septic tank. Replace the cleaned filter back into the outlet tee.

H. When the tank is empty, the interior surfaces of the tank should be inspected for leaks or cracks using a strong light.

I. A written record of all maintenance of the septic tank and absorption system should be kept by the owner of that system.

J. The functional operation of septic tanks is not improved by the addition of yeasts, disinfectants, additives or other chemicals; therefore, use of these materials is not recommended.

K. The advice of your regulatory authority should be sought before chemicals arising from a hobby or home industry or other unusual activities are discharged into a septic tank system.

L. Economy in the use of water helps prevent overloading of a septic tank system that could shorten its life and necessitate expensive repairs. The plumbing fixtures in the building should be checked regularly to repair any leaks that can add substantial amounts of water to the system. Industrial wastes and other liquids that may adversely affect the operation of the onsite wastewater system should not be discharged into such a system. Paper towels, facial tissue, disinfectant wipes, newspaper, wrapping paper, disposable diapers, sanitary napkins, coffee grounds, rags, sticks, and similar materials should also be excluded from the septic tank since they do not readily decompose and can lead to clogging of both the plumbing and the absorption system.

1.2. Maintenance of Other Tanks.

A. Other Tanks.

Any measurable amount of sludge or scum present in other tanks should be removed.

B. If a screen is present, it should be rinsed and cleaned over the opening of the septic tank.

KEY: waste water, onsite wastewater systems, alternative onsite wastewater systems, septic tanks

September 1, 2013

19-5-104

Notice of Continuation February 10, 2010

R317. Environmental Quality, Water Quality.**R317-11. Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems.****R317-11-1. Authority, Purpose and Scope.**

1.1. This rule describes the procedures for certification and recertification of individuals who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems as set forth in Title 19, Chapter 5, Section 121.

1.2. The purpose of this rule is to define the minimum requirements for those persons who design, inspect, and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems and establish methods for compliance and evaluating non-compliance.

1.3. These certification rules apply to any person who designs, inspects, or maintains underground wastewater disposal systems, or who conducts soil evaluations or percolation tests for underground wastewater disposal systems. Certification is required by any person who performs these activities as provided below.

R317-11-2. Definitions.

"Alternative onsite wastewater system" means an onsite wastewater system that is not a conventional onsite wastewater system.

"Approved Training Provider" means a provider approved by the director for training and examinations for certification of persons who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems.

"Certificate" means a certificate issued by the director stating that the recipient has met the minimum requirements to be certified as described in this rule.

"Conventional system" means an onsite wastewater system typically consisting of a building sewer, a septic tank, and an absorption system utilizing absorption trenches, absorption beds, deep wall trenches, or seepage pits.

"Director" means the director of the Division of Water Quality.

"Division" means the Utah Division of Water Quality.

"Onsite professional" means a person who is certified at Level 1, 2, or 3 according to this rule.

"Underground Wastewater Disposal System" means a system for underground disposal of wastewater. It usually consists of a building sewer, a septic tank, and an absorption system. It includes onsite wastewater systems and large underground wastewater disposal systems as defined in Rule R317-1.

R317-11-3. Classes of Certification.

3.1 There are three classes of onsite professional certification, Level 1 being the lowest and Level 3 being the highest:

A. Level 1, soil evaluations and percolation testing;

B. Level 2, design, inspection and maintenance of conventional underground wastewater disposal systems, including soil evaluations and percolation testing; and

C. Level 3, design, inspection and maintenance of alternative or conventional underground wastewater disposal systems, including soil evaluations and percolation testing.

R317-11-4. Individuals Not Required to Obtain Certification.

4.1. An individual is not required to obtain certification to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the

individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.

4.2. An uncertified individual may conduct soil evaluations or percolation tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:

A. has the capability of properly conducting the tests, as determined by the local health department and

B. is supervised by a certified individual when conducting the tests.

4.3. A person involved in the pumping of an underground wastewater disposal system does not have to be certified under this rule, although notification to the local health department is required under Rule R317-550.

4.4. Licensed plumbers and electricians, when maintaining electrical equipment or wastewater drainage lines leading to the underground wastewater disposal systems, are not required to be certified under this rule.

4.5. Uncertified employees, subordinates or associates of a certified individual are not required to be certified under this rule when working on activities related to underground wastewater disposal systems under the supervision of a certified individual. Supervision means that a certified individual is personally responsible for the work, and reviews, corrects and approves work done by an uncertified employee, subordinate or associate. Such work must be signed by a certified individual.

R317-11-5. Qualifications for Certification.

5.1. In order to qualify for initial Level 1 certification, a person must:

A. attend a training course provided by an approved training provider specifically for the purpose of certification at Level 1; and

B. demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 1 training course.

5.2. In order to qualify for initial Level 2 certification, a person must:

A. attend a training course provided by an approved training provider specifically for the purpose of certification at Level 2;

B. demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 2 training course; and

C. be certified for soil evaluations and percolation testing at Level 1.

5.3. In order to qualify for initial Level 3 certification, a person must:

A. attend a training course provided by an approved training provider specifically for the purpose of certification at Level 3;

B. demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 3 training course; and

C. be certified for soil evaluations and percolation testing at Level 1, and certified for design, inspection and maintenance of conventional systems at Level 2.

5.4. All applicants are required to take an examination, but an applicant's current licensing and experience may be substituted for attending the training courses described in Subsections R317-11-5.1.A, R317-11-5.2.A, and R317-11-5.3.A, as follows:

A. An environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act qualifies to substitute licensure and experience for required training for a Level 1, 2 or 3 certification if the Environmental Health

Scientist provides to the director evidence of current licensure in Utah and two years experience appropriate to the class of certification requested.

B. A professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act qualifies to substitute licensure for required training for a Level 1, 2, or 3 certification if the professional engineer provides to the director evidence of current Utah licensure.

C. A person who is a contractor licensed under Title 58, Chapter 55, Utah Construction Trades licensing Act qualifies to substitute licensure and experience for required training for a Level 1 or 2 certification if the licensed contractor provides to the director evidence of at least five years of experience installing underground wastewater disposal systems.

5.5. Evidence of current licensure and experience appropriate to the class of certification must be provided to the director at the time of application for certification.

5.6. An applicant is also required to meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

R317-11-6. Application for Certification.

6.1. In order to become certified at any level, a person must:

A. meet the qualifications for certification as described in Section R317-11-5; and

B. submit an application to the director on forms approved by the division, including citizenship or alien identification certification, along with payment of applicable fees.

R317-11-7. Training and Examinations.

Training will be provided by an approved training provider. Examinations will be given at the conclusion of each training session. Training will be provided at least twice per year, but may be given more often at the discretion of the approved training provider.

R317-11-8. Certificates.

8.1. Certificates will be issued by the director upon receipt of the completed application, required fees, and evidence that the requirements of Section R317-11-5 have been met.

8.2. Date of issuance of an initial certificate will be determined by the date the exam is passed.

8.3. Certificates will expire on December 31 of the appropriate calendar year, calculated in accordance with Section R317-11-9.

R317-11-9. Renewal of Certification.

9.1. Certification renewal is required every 3 years for all levels of certification.

9.2. A certified individual who renews a certificate in a timely manner continues to be eligible for certification without meeting new requirements unless the certification is suspended, revoked or annulled.

9.3. Renewal of a certificate may be obtained at any time prior to certificate expiration by:

A. making application to the director along with payment of applicable fees; and

B. successfully completing the required refresher course or courses provided by an approved training provider; or

C. providing with the application evidence of successfully completing other approved training.

R317-11-10. Lapsed Certifications.

10.1. Expired certifications may be reinstated within six months after the expiration date by:

A. completing the required refresher course or courses as provided by an approved training provider, and

B. submitting a renewal application and reinstatement fee to the division.

10.2. After the reinstatement period, initial certification requirements must be met in order to be certified.

R317-11-11. Exceptions.

The director has authority to consider exceptions to this rule upon written request.

R317-11-12. Suspension, Revocation, or Annulment of Certification.

12.1. Grounds for suspending, revoking, or annulling a person's certificate may be, but are not limited to, any of the following:

A. demonstrated disregard for the public health and safety;

B. misrepresentation or falsification of information or reports submitted to the division;

C. cheating on a certification exam;

D. falsely obtaining or altering a certificate; or

E. incompetence, misconduct or significant negligence in the performance of work done pursuant to the certification.

12.2. Disciplinary action such as suspension, revocation, or annulment of certificate by the director may result where it is shown that the circumstances and events relative to the work done pursuant to the certification were under the individual's jurisdiction and control. Circumstances beyond the control of the individual shall not be grounds for disciplinary action.

12.3. Any certificate not issued as specified in this rule will be annulled.

12.4. Recommendations may be made to the director regarding the suspension, revocation, or annulment of a certificate. Prior to making any such recommendation, the individual shall be informed in writing of the reasons for such a recommendation. The individual shall be allowed an opportunity for an informal hearing before a review committee appointed by the director. Any request for an informal hearing shall be made within 30 days of the date the notification is mailed.

12.5. Following an informal hearing, or the expiration of the period for requesting a hearing, the director shall be notified of the final recommendation.

12.6. A challenge to the director's determination may be made as provided in Rule R305-7.

R317-11-13. Certification Requirements and Effective Dates.

No person shall design, inspect, maintain, or conduct soil evaluations or percolation tests for an underground wastewater disposal system unless they hold current certification from the director, except as exempted in Section R317-11-4.

R317-11-14. Noncompliance.

Noncompliance with these certification rules is a violation under Section 19-5-115 and may be subject to enforcement by the director.

KEY: waste water, occupational licensing, certification, onsite professional

September 1, 2013

Notice of Continuation June 27, 2011

19-5-104

19-5-106

19-5-121

R317. Environmental Quality, Water Quality.**R317-15. Water Quality Certification.****R317-15-1. Purpose.**

This rule establishes procedures for applying for and processing State Water Quality Certification pursuant to Section 401 of the federal Clean Water Act, 33 U.S.C. Sections 1251 through 1387 and consistent with the Utah Water Quality Act, Title 19, Chapter 5. The purpose of Certification is to ensure that the federally permitted or licensed activities will be conducted in a manner that will comply with applicable discharge and water quality requirements in order to maintain the chemical, physical, and biological integrity of waters of the United States within the State.

R317-15-2. Definitions.

In addition to the general definitions in Section R317-1-1, the following definitions apply for purposes of this Rule R317-15 only:

"Applicable discharge and water quality requirements" mean requirements in the Utah Water Quality Act, Utah Code Ann. Title 19, Chapter 5, and rules made thereunder that are equivalent to the requirements of 33 U.S.C. Sections 1311, 1312, 1313, 1316 and 1317 and regulations promulgated thereunder.

"Applicant" means a person who applies for a license or permit issued by an agency of the federal government to conduct an activity that is subject to Certification under Section 401.

"Blanket Certification" or "Blanket" means an exemption from the requirement to obtain an individual Water Quality Certification for certain activities deemed insignificant effect on water quality and may be issued to Section 404 nationwide or regional general permits.

"Licensing or permit agency" means an agency of the federal government to which application is made for a license or permit that is subject to Certification.

"Section 401" means Section 401 of the federal Clean Water Act, 33 U.S.C. Sections 1251 to 1387.

"State Water Quality Certification" or "Certification" means Certification by the director under Section 401 that a proposed discharge will comply with applicable discharge and water quality requirements. A Certification may be a Blanket or individual Certification that may contain conditions.

R317-15-3. Applicability.

3.1. Rule R317-15 applies to any applicant for a federal permit or license that is subject to the requirements of Section 401. Federal permits and licenses most frequently subject to Certification in Utah include the following:

A. permits from the United States Army Corps of Engineers (USACE) pursuant to Section 404 of the federal Clean Water Act, 33 U.S.C. Sections 1251 through 1387; and

B. licenses from the Federal Energy Regulatory Commission under the Federal Powers Act, 16 U.S.C. Section 1791, et seq.

This is not a complete list of federal permits or licenses requiring Certification.

3.2. Certification is required for activities under Section 404 of the federal Clean Water Act, 33 U.S.C. Section 1344. Section 404 requires approval for the discharge of dredged or fill materials into water of the United States. However, there are certain activities that are ordinarily exempt from Section 404 requirements, and which will not therefore require Certification under this Rule R317-15. Those activities include the discharge of dredge or fill material: from normal farming and ranching activities; from the construction or maintenance of farm or stock ponds or irrigation ditches; from the maintenance of drainage ditches; and from the construction or maintenance of farm roads. See Section 404(f), 33 U.S.C. Section 1344(f) for a

complete list of exempt activities.

3.3. A Certification will ordinarily include conditions necessary to comply with the requirements of the Utah Water Quality Act, Title 19, Chapter 5, and rules made under that Act. However, nothing in this rule or a Certification exempts a person from compliance with the Act, or rules made under that Act.

R317-15-4. Application Provisions.

4.1. Unless otherwise determined by the director, the application for Certification shall include the following complete information and documentation:

A. application date;

B. name and address of the applicant;

C. signature of the applicant. A corporate application must be signed by an officer of the corporation. Any signature required for application for Certification shall be provided as described in 40 CFR Section 122.22(a);

D. name, address, email address and phone number of a contact for the application, e.g., the person to whom requests for additional information should be addressed;

E. list of names and address of landowners adjacent to the project site;

F. plan or drawings that include a plan view, cross section view, and elevation view;

G. associated existing or pending federal, state, and local permits, including land use permits, with corresponding file numbers;

H. for proposed discharges:

1. name(s) of the waters where the discharge may occur;

2. precise latitude and longitude of the discharge location(s) to 5th decimal place in decimal degrees and to the tenth of a degree in degrees-minutes-seconds notation;

3. beneficial use classifications of potentially affected surface waters (see Section R317-2-13); and

4. list any known causes of water impairment per Sections 303(d) and 314 of the federal Clean Water Act, 33 U.S.C. Sections 1251 through 1387 and the names of any associated local watershed management plans including TMDL studies;

I. a description of the overall project including the construction and operation of the facilities which may result in discharge. Characterize the physical, chemical, biological, thermal and other pertinent properties of the discharge;

J. a description on how the discharges are compliant with water quality standards of the receiving water including anti-degradation requirements, beneficial use designations, narrative standards and numeric criteria;

K. a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of the equipment or facilities employed in control of the proposed discharge. Provide a map showing the location(s) of the monitoring point(s);

L. supporting documentation submitted to federal agencies (e.g., maps, plans, specifications, project dimensions, copies of associated federal applications, biological and engineering studies, reference information in FERC filings, Environmental Assessment or Environmental Impact Statements, Alternative Analyses), as applicable;

M. an exhibit that identifies and describes other requirements of State law applicable to the activity that have any relationship to water quality, including requirements under:

1. Section 19-5-114, spills or discharges of oil or other substance;

2. Section R317-2-12, Category 1 and Category 2 waters;

3. Section R317-2-3 Antidegradation Policy (ADR);

4. Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for Construction Activities Permit No. UTR300000; and

5. UPDES General Permit for Construction Dewatering

Permit No. UTG070000.

N. estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;

O. additional information regarding any unique features of the project;

P. any additional information as required by the director.

4.2. If any information required by 4.1 is expected to be developed in the course of the federal application process, the applicant shall include a statement to that effect, and shall provide the information when it is submitted to the federal permitting or licensing agency.

4.3. The director may prescribe a form for application for a Certification.

4.4. If an application for Certification is incomplete or is otherwise deficient, the applicant will be notified and will be given a deadline for the submittal of such information. If the information is not submitted timely and is necessary for reaching a Certification decision, the Certification process will be suspended pending the development of additional information.

4.5. The owner or its duly authorized representative shall notify the director in writing of changes which may affect the application for Certification and Certification process.

4.6. The applicant shall pay any applicable application fees to the "Utah Division of Water Quality." Contact the Division for further information about the application fee. The application fee is not refundable or transferable to a separate application.

4.7. An application for Certification shall be made simultaneously with the application to the federal licensing or permit agency. If application is not made in accordance with this requirement, there may be delays and additional fees to allow the collection and consideration of all pertinent information.

R317-15-5. Public Notice and Public Hearing.

5.1. The director's draft Certification shall be subject to a public notice and comment period. The comment period shall ordinarily be 30 days, but may be lengthened or shortened for good cause. For example:

A. the period may be shortened if the application is of a type that is routinely granted;

B. the period may be shortened if the impacts of the proposed activity are minor;

C. the period may be shortened if the period for issuing a Certification is shortened by the federal licensing or permitting agency; or

D. the period may be lengthened for a major activity.

5.2. Every five years the USACE advertises the re-evaluation of the general permits under Section 404 of the Clean Water Act for reissuance with a public notice in the Federal Register. At that time, the Division is given the opportunity to reevaluate State requirements for Certification application, conditions and notification as well as how and if the general permits will be recertified with a Blanket Certification. Any general permit denied Blanket Certification during this period would require individual application to the Division for a project by project Certification.

The director then issues a 30-day public notice announcing which general permits will receive Certification and their requirements for the next five years. In an effort to support the streamlined process of the Corps' general permit program, the Division will not hold a project specific Certification public notice for individual activities authorized by the Corps under the general permits during the subsequent five years unless the Division declined to certify specific general permits during the re-evaluation process.

5.3. When practicable, the public notice and comment

period and any public hearing for a draft Certification will ordinarily be held jointly with federal agencies that are licensing or permitting the proposed activity.

5.4. If the certification is not public noticed by the federal agency the Division will publish the public notice by one or more of the following methods:

A. Utah Department of Environmental Quality website; or

B. any other means selected by the director that will effectively solicit input from stakeholders representing State and federal agencies, interests groups, and the general public.

5.5. The director may, at the director's discretion, hold a public hearing to take oral comments.

R317-15-6. Director's Decision.

6.1. Although the evaluation process may vary on a site-specific basis, the director, in determining whether a proposed discharge complies with applicable discharge and water quality requirements, will ordinarily consider in the evaluation process whether a proposed discharge:

A. prevents or interferes with the attainment or maintenance of applicable water quality standards in Section R317-2 including:

1. impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6;

2. exceeds water quality criteria, either narrative or numeric, in Section R317-2-7;

3. fails to meet the antidegradation (ADR) requirements of Section R317-2-3;

B. causes a violation of the Utah Water Quality Act, Title 19, Chapter 5;

C. are inconsistent with wasteloads and permitted load allocations in listed TMDLs in Section R317-1-7;

D. causes an exceedence of effluent limitations or control regulations applicable under Rule R317-8; or

E. otherwise causes a failure of compliance with applicable discharge and water quality requirements.

6.2. In considering whether there will be a discharge or whether any discharge will comply with applicable discharge and water quality requirements, the director may also consider whether the applicant is currently in significant noncompliance of the terms and conditions of any previously issued Certification for another project or activity, and may deny Certification based on the existence of any such outstanding significant noncompliance.

6.3. After review of the application for Certification the director will either:

A. issue a Certification;

B. issue a Certification with specific conditions that must be met in order for the applicant to be in compliance with applicable law;

C. deny the Certification and include reasons for denial;

or

D. waive Certification if the director finds that the activity will:

1. cause minimal or no impacts to the quality of State waters; or

2. have a temporary and limited effect on water quality, as provided in Subsection R317-2-3.5.b.4.

6.4. If a person who is required to obtain a Certification fails to do so, the director may, at his discretion, process an application for Certification after-the-fact. An application for an after-the-fact Certifications will be reviewed under the same standards as timely application for Certification. The director may require restoration, other actions, or both, as a condition of Certification. An after-the-fact applicant shall have the burden of proving what the original baseline conditions were, and a Certification may be denied in the absence of such proof. After-the-fact Certifications will not have retroactive effect.

Enforcement action may be taken for failure to obtain a Certification even if a person obtains an after-the-fact permit or license from the federal agency.

6.5. A Certification is a Permit Order and may be challenged as provided in Section 19-1-301.5 and R305-7. A recipient of a Certification shall comply with all conditions of the Certification; any noncompliance is a violation of these rules and is grounds for enforcement action.

R317-15-7. Enforcement.

A Certification shall be considered an order under the Utah Water Quality Act.

R317-15-8. Transfer.

8.1. The applicant shall give written notice to the director of any transfer of the Certification, within 30 days after the transfer.

8.2. The notice shall include a written agreement between the existing and new applicant establishing a specific date for transfer of Certification responsibility, coverage and liability.

**KEY: Water Quality Certification, Section 401, 401
Certification, Clean Water Act
August 19, 2013**

**19-5
33 U.S.C. 1251-1387**

R331. Financial Institutions, Administration.**R331-20. Designation of Adjudicative Proceedings as Informal.****R331-20-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Section 63G-4-202 and Subsection 7-1-301(15).

(2) This rule applies to all proceedings before the department.

(3) This rule designates all proceedings before the Department of Financial Institutions as informal hearings.

R331-20-2. Rule.

In accordance with Section 63G-4-202 all proceedings before the Department of Financial Institutions which are subject to the requirements of the Utah Administrative Procedures Act are designated informal proceedings.

KEY: financial institutions, government hearings**1995****Notice of Continuation August 23, 2013****63G-4-202****7-1-301(15)**

R331. Financial Institutions, Administration.**R331-21. Rule Governing Establishment of and Participation in Collective Investment Funds by Trust Companies.****R331-21-1. Authority, Scope, and Purpose.**

- (1) This rule is issued pursuant to Sections 7-1-301 and 7-5-13.
- (2) This rule applies to all trust companies conducting a trust business subject to the jurisdiction of the department.
- (3) This rule authorizes the establishment of and participation in collective investment funds by trust companies subject to the jurisdiction of the department.

R331-21-2. Definitions for Purposes of this Rule.

- (1) "Affiliate" means any company which controls, is controlled by, or is under common control with a trust company, and that is authorized to conduct a trust business by its applicable state or federal regulator.
- (2) "Collective investment fund" means a fund established and administered by a trust company or one of its affiliates, into which a trust company and one or more of its affiliates pool trust account funds for common investment.
- (3) "Commissioner" means the Commissioner of Financial Institutions.
- (4) "Control" means "control" as defined in Section 7-1-103.
- (5) "Department" means the Department of Financial Institutions.
- (6) "Trust business" means "trust business" as defined in Section 7-5-1(1)(b).
- (7) "Trust company" means any company authorized to engage in a trust business in Utah pursuant to Sections 7-5 et seq., or by federal law.

R331-21-3. Establishment of Collective Investment Funds.

- (1) Any trust company authorized to engage in the trust business in Utah may:
 - (a) Establish collective investment funds that authorize participation by fiduciary or trust accounts of the trust company, its affiliates or both; and
 - (b) Participate in collective investment funds established by an affiliate of the trust company, if:
 - (i) The affiliate is authorized under the laws of its chartering authority to establish a collective investment fund in which its affiliates may participate; and
 - (ii) The plan establishing the collective investment funds specifically authorize a participation by the trust company.
- (2) The common trust funds held by a trust company or its affiliate must be maintained exclusively for collective investment and reinvestment.
- (3) The plan establishing the collective investment fund must be approved by the trust company's board of directors and filed with the commissioner. A copy of the plan shall be available at the principal office of the trust company for public inspection during business hours and upon request a copy of the plan shall be furnished to any person who has a direct or indirect legal interest in such plan.
- (4) No trust company shall have any non-fiduciary interest in a collective investment fund. This limitation includes lending money to a fund, selling property to a fund, and purchasing property from a fund.
- (5) The trust company shall maintain adequate accounting records of the collective investment fund for periodic review by the department and federal regulatory agencies.

KEY: financial institutions, trusts**1995****Notice of Continuation August 23, 2013****7-1-301****7-5-13**

R331. Financial Institutions, Administration.**R331-24. Accounting for Accrued Uncollected Income by Banks and Industrial Loan Corporations.****R331-24-1. Authority, Scope, and Purpose.**

- (1) This rule is issued pursuant to Section 7-1-301(14).
- (2) This rule applies to all state chartered banks and industrial loan corporations.
- (3) The purpose of this rule is to establish accounting requirements for accrued uncollected income to help ensure accurate accounting of the income of banks and industrial loan corporations.

R331-24-2. Definitions.

- (1) "Accrual basis of accounting" means the accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether or not received.
- (2) "Business credit card" means a credit card extended to a person for business purposes with a sponsoring company directly or indirectly obligated for payment of any advances.
- (3) "Commissioner" means the Commissioner of Financial Institutions.
- (4) "Consumer loan" means credit extended for household, family, and personal expenditures, including credit cards, and loans secured by one to four-family residential properties.
- (5)(a) "Contractual commitment to advance funds" means:
 - (i) 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
 - (ii) an obligation to guarantee or stand as surety for the benefit of a third party.
- (b) 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.
- (6) "In process of collection" means collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future.
- (7) "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; and

(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 is legally enforceable, including statutory bad debt under Section 7-3-25 or 7-8-15 respectively.

(8) "Loans or extensions of credit" does not include:

(a) A receipt by a bank or an 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; or

(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.

(9) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described, that 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.

(10) "Well-secured" means a debt that is secured by:

(a) Collateral in the form of liens on or pledges of real or personal property, including securities, that have a realizable value sufficient to discharge the debt in full, including accrued interest; or

(b) The guarantee of a financially responsible party.

R331-24-3. Accounting for Accrued Uncollected Income.

(1) General Rule:

A bank or industrial loan corporation that uses the accrual basis of accounting to prepare its financial statements shall, at each regularly scheduled board meeting, review all earned but uncollected income and determine the portion of it that is uncollectible. This determination shall be in accordance with

generally accepted accounting principles. At a minimum, the following events should stop the accrual of income:

(a) The accrual of interest income shall cease when any loan or extension of credit is contractually 90 days delinquent.

(i) For a monthly installment account, four payments delinquent is the equivalent of 90 days delinquent.

(ii) For a single-payment commercial account that calls for interest-only payments prior to maturity, the 90-day period commences with the interest-only due date.

(b) No further income may be recognized for a precomputed loan, lease, or discounted contract when it becomes 90 days delinquent.

(c) In restructuring a loan or extension of credit, a bank or industrial loan corporation may only capitalize or add to the new principal balance up to 90 days' interest, unless the board of directors specifically approves otherwise in writing at its next regularly scheduled meeting. If, at that meeting, the board fails to approve the capitalization of additional interest, the loan or extension of credit is considered to be more than 90 days delinquent, and the accrual of interest income shall cease.

(2) Exemptions:

Subsection (1) does not limit the accrual of interest income:

(a) for any consumer loan that is in the process of collection;

(b) for any business credit card balance that is in the process of collection;

(c) for loans or other debt instruments acquired at a discount (because there is uncertainty as to the amounts or timing of future cash flow) from an unaffiliated third party (such as another institution or the receiver of a failed institution), including those that the seller had maintained in nonaccrual status, and that met the amortization criteria specified in the AICPA Bulletin No. 6.

(d) for loans secured by a 1-to-4 family residential property. Nevertheless, such loans should be subject to other alternative methods of evaluation to assure the financial institution's net income is not materially overstated.

(e) for any other loan or lease that is both well-secured and in the process of collection;

(f) to the extent the commissioner provides an additional exemption from Subsection (1) by express, prior, written approval;

(3) Notwithstanding this rule, all extensions of credit are subject to Sections 7-3-25 and 7-8-15.

R331-24-4. Penalty for Violation.

Failure of management and the board of directors to make the review and determinations required by this rule, in good faith and in accordance with generally accepted accounting principles, constitutes grounds for supervisory sanction under Sections 7-1-307 and 7-1-308.

KEY: financial institutions

November 3, 1998

Notice of Continuation August 23, 2013

7-1-301(14)

R380. Health, Administration.**R380-250. HIPAA Privacy Rule Implementation.****R380-250-1. Authority and Purpose.**

(1) This rule implements provisions required by 45 CFR Part 164, subpart E, dealing with the treatment of certain individually identifiable health information held by the Department of Health.

(2) This rule is authorized by Utah Code Sections 26-1-5 and 26-1-17.

R380-250-2. Definitions.

As used in this rule:

(1) "Access" means an eligibility query either telephonically or electronically. This does not include direct access to databases.

(2) "Covered program" means the smallest agency or program unit within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.

(3) "HIPAA Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information found in 45 CFR Part 160 and Subparts A and E of Part 164.

(4) "Individual" means a natural person. In the case of an individual without legal capacity or a deceased person, the personal representative of the individual.

R380-250-3. General Compliance.

(1) This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.

(2) Covered programs shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information.

R380-250-4. Changes to Rule.

The Department reserves the right to alter this rule and its notices of privacy practices required by the HIPAA Privacy Rule.

R380-250-5. Sanctions, Retaliation.

(1) An employee of a covered program may be disciplined for failure to comply with the HIPAA Privacy Rule requirements found in 45 CFR Part 164, Subpart E. Discipline may include termination and civil or criminal prosecution.

(2) An employee of a covered program may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any person for exercising any right established by the HIPAA Privacy Rule or for opposing in good faith any act or practice made unlawful by the HIPAA Privacy Rule.

R380-250-6. Waiver of Rights Prohibited.

A covered program may not require individuals to waive their rights under 45 CFR 160.306 or 45 CFR Part 164, Subpart E as a condition of the provision of treatment, payment, health plan enrollment, or eligibility for benefits.

R380-250-7. Complaints.

(1) An individual may seek a review of a covered program's policies and procedures or its compliance with such policies and procedures through informal contact with the covered program.

(2) An individual may file a formal complaint concerning a covered program's policies and procedures implementing 45 CFR Part 164, Subpart E or its compliance with such policies and procedures or the requirements of 45 CFR Part 164, Subpart E by filing with the Office of the Executive Director of the Department a request for program action meeting the requirements of the Utah Administrative Procedures Act.

R380-250-8. Right to Request Privacy Protection.

(1) An individual may request restrictions on use and disclosure of protected health information as permitted in 45 CFR 164.522 by submitting a written request to the designated privacy officer for the covered program.

(2) The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.

R380-250-9. Individual Access to Protected Health Information.

(1) An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered program.

(2) The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.

R380-250-10. Amendment of Protected Health Information.

(1) An individual may request amendment to protected health information about that individual that the individual believes is incorrect as permitted in 45 CFR 164.526 by submitting a written request to the designated privacy officer for the covered program.

(2) The decision whether to grant the request, the time frames for action by the covered program, amendment of the record, requirements for denial, and acting on notices of amendment from third parties shall be in accordance with 45 CFR 164.526.

R380-250-11. Accounting for Disclosures.

(1) An individual may request an accounting of disclosures of protected health information as permitted in 45 CFR 164.528 by submitting a written request to the designated privacy officer for the covered program.

(2) The content of the accounting and the provision of the accounting, shall be in accordance with 45 CFR 164.528.

R380-250-12. Provider Notice of Privacy Practices.

A Medicaid provider or a Children's Health Insurance Program (CHIP) provider shall not access the Medicaid database or the CHIP eligibility database, unless the provider's notice of privacy practices contains a statement that the provider either has, or may submit personally identifiable information about the patient to the Medicaid eligibility database or to the CHIP eligibility database.

KEY: HIPAA, privacy**August 7, 2013****Notice of Continuation May 6, 2013****26-1-5****26-1-17**

R392. Health, Disease Control and Prevention, Environmental Services.**R392-200. Design, Construction, Operation, Sanitation, and Safety of Schools.****R392-200-1. Authority and purpose of Rule.**

This rule is authorized under Section 26-15-2. It establishes minimum standards for the design, construction, operation, sanitation, and safety of schools.

R392-200-2. Applicability, Responsibility for Compliance.

(1) The provisions of this rule are applicable to the design, construction, operation, maintenance, safety, health, and sanitation of schools, their grounds, and accessory structures.

(2) The governing body of the school, shall ensure that the school building and grounds are constructed, operated, and maintained in accordance with this rule.

(3) This rule does not require a construction change in any portion of a school if it was constructed and in compliance with law in effect at the time the school was built except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that conditions in any school are a threat to the health of persons using the school, the Executive Director or the Local Health Officer may order correction of any condition that impairs or endangers the health or life of those attending schools. The Executive Director or Local Health Officer may allow temporary measures to ameliorate the problem for up to a year until the governing body can make a permanent correction.

R392-200-3. Definitions.

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health.

(2) "Director" means the Executive Director of the Utah Department of Health, or designated representative.

(3) "Governing Body" means the board of education, owner, person or persons designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the school.

(4) "Instructor" means any volunteer or employee educator, licensed or not licensed, responsible for student education at a private or public school.

(5) "Local Health Officer" means the health officer of any county or district health department, or designated representative.

(6) "School" means any public or private educational institution including charter schools, elementary schools, middle schools, and secondary schools established to provide education for grades kindergarten through 12 regardless of student's age, including attached pre-schools, but excluding home schools.

(7) "Toxic" means any chemical or biological agent the exposure to which may cause an acute or chronic health hazard.

R392-200-4. Site Standards.

(1) Prior to developing plans and specifications for a new school, or the expansion of an existing school, school districts and charter schools shall coordinate with local health departments regarding environmental health and safety issues to avoid unreasonable risks to the health and safety of students, school staff, and faculty.

(2) The school site shall not be located in an area where there is a history or high possibility of flooding, high ground water, snow or earth slides, or an area that was a repository for hazardous substances.

(3) The school site shall be located to minimize the negative influence of railroads, freeways, highways, heavy traffic roads, industrial areas, airports and aircraft flight patterns, fugitive dust, odors, or other areas where auditory problems, malodorous conditions, or safety and health hazards

exist.

R392-200-5. School Grounds.

(1) School ground fencing shall be constructed of smooth materials with no barbs or projections and shall be maintained in good repair.

(2) Mechanical equipment, electrical transmission lines, poles, transformer boxes, and other electrical equipment shall be located or protected with a barrier to prevent an electrical or other safety hazard.

(3) Walkways shall be provided between the school building and other buildings on the school grounds. Walkways shall be graded to allow proper drainage, and allow for safe passage. Walkways and parking areas shall be maintained in good repair and free of a buildup of snow and ice.

(4) Illuminance at a minimum of 1 foot candle shall be provided for walkways, building entrances, parking areas, roads, and similar areas, during hours of use.

(5) With the exception of "pop up heads", elevated lawn sprinkler heads shall not be permanently installed and shall not be left in place on playgrounds or other recreational areas.

(6) Service roads, parking areas, and walkways on school property shall be constructed and located to facilitate the safe movement of vehicular and pedestrian traffic. Student drop off and pick up zones must maximize safety.

(7) The governing body shall control health and safety risks on school property by removing items that are likely to be a source of risk such as weeds, holes, broken glass, or broken or cut tree limbs and by filling or covering excavations or ditches.

(8) Playgrounds must be located in areas that maximize safety. The governing body shall provide personnel so that playgrounds are adequately supervised during recess and school sponsored outdoor time. Playground equipment, if provided, shall be located to permit supervision.

(9) The governing body shall minimize the likelihood of students' contact with stray animals using methods such as the installation of fencing at elementary schools and taking appropriate actions to have removed any stray animals found on the school property. Animals brought by students or teachers for instruction or demonstration purposes are allowed if controlled in a manner that protects students and, if a vaccine is available for that species, the animal has been vaccinated for rabies. Police enforcement dogs, and service animals on duty under the Americans with Disabilities Act or under the provisions of an individualized education plan made pursuant to the Individuals with Disabilities Education Act are allowed on the school grounds.

(10) If bicycles are permitted at a school, the governing body shall ensure that a designated area for bicycle parking is provided and located where it will not create a safety hazard by obstructing building entry or exit ways, walkways, or vehicular traffic.

(11) Structures or landscaping must not provide access by unauthorized individuals to the roof of the school.

R392-200-6. Food Service.

(1) The design, construction, installation, and operation of food service facilities and equipment shall be in compliance with the Food Service Sanitation Rule R392-100 and local health department regulations. Plans for food service facilities must be submitted by the governing body to the local health department for evaluation and approval prior to the beginning of construction. Any significant modification to the school food service facility that falls within the plan review requirements of R392-100 must be approved by the local health department prior to modification.

(2) The governing body shall ensure that food provided by the school that is not prepared on site is obtained, transported, and served from approved sources as required by R392-100.

R392-200-7. Sanitary Facilities and Controls.**(1) Water Supply.**

(a) The water supply shall meet the requirements of the Utah Department of Environmental Quality. All bottled water supplied or sold by the school shall meet the bottled water requirements of the Utah Department of Agriculture and Food.

(b) The governing body shall notify the local health department as soon as reasonably possible but no longer than four hours after the discovery of a continuing water supply interruption. If the water supply is estimated to be or actually interrupted for four hours or more, the local health officer may require the school to close or have the school provide an alternative source of potable water approved by the local health department.

(2) Wastewater.

(a) The governing body shall ensure that all wastewater or water-carried wastes such as water from cleaning garbage cans and dumpsters is disposed of in accordance with rules established by the Utah Department of Environmental Quality.

(b) The governing body shall notify the local health department as soon as reasonably possible but no longer than four hours after the discovery of a continuing sewer system interruption. If the sewer system is estimated to be or is actually interrupted for four hours or more the local health officer may require the school to be closed or require the school to provide temporary toilet facilities or an alternate wastewater disposal method approved by the local health department and the Utah Department of Environmental Quality.

(3) **Plumbing.** The governing body shall ensure that plumbing is sized, installed, and maintained in accordance with the requirements of the most restrictive or specific between the plumbing code adopted by the Utah legislature under Section 15A-2-103 and the 2010 Americans with Disability Act (ADA).

(4) Toilet Rooms.

(a) Toilet rooms shall be in compliance with the requirements of the most restrictive or specific between the plumbing code adopted by the Utah Legislature under Section 15A-2-103 and the 2010 ADA. With the exception of faculty or staff restrooms, locked toilet rooms are prohibited unless students have access to the number of unlocked toilet rooms as required under the aforementioned plumbing code or the 2010 ADA, whichever is the most stringent or restrictive of the two.

(b) Self-closing entrance doors shall be provided if privacy is not achieved using shielding to break the line of vision of a person looking into the toilet room from outside the toilet room.

(c) If a toilet room is designed for use by more than one person at a time, each toilet therein shall be enclosed on all four sides by a separate stall. The height of the stalls shall allow sufficient light or ventilation therein. The stall partitions and door shall be at least 16 inches from the floor. A urinal is exempt from the requirements for a stall; however, where there are two or more adjacent urinals, there shall be a solid partition between adjacent urinals that extends at least 18 inches from the wall.

(d) In new or extensively remodeled schools, toilet rooms shall be mechanically vented to the outside of the building. A system shall be installed to resupply the air that is exhausted.

(e) An easily cleanable waste container shall be provided and maintained in each toilet room. At least one conveniently located covered waste receptacles must be provided in toilet rooms used by females nine years and older. Assigned school or contracted personnel shall empty each waste container as often as necessary and at least daily.

(f) All toilet room fixtures shall be kept clean and maintained in good repair.

(g) Toilet fixtures shall be provided with a supply of toilet tissue at all times.

(h) Toilet rooms must be easily accessible and

conveniently located for use at all times the school is in session or used for school approved activities, for all school recreational facilities, and for areas utilized for school functions.

(i) Toilet room walls, floors, and ceilings must be constructed of smooth, non-absorbent, easily cleanable materials. Assigned school or contracted personnel shall keep toilet room walls, floors, and ceilings clean and maintained in good repair.

(5) Diaper Changing.

(a) A school attended by students who require changing of diapers by school or designated personnel must have a designated diaper changing area.

(b) The diapering area shall not be located in a food preparation or eating area.

(c) The diapering surface must not be used for any other purpose. The diapering station shall have a solid, smooth, non-absorbent surface kept in good repair.

(d) Child and student diapering stations shall be designed with a raised edge to prevent a child or student from rolling off or falling.

(e) A privacy area for individuals older than three years of age requiring diaper change must be provided for diaper changing.

(f) The governing body shall make sure that the school staff members who perform diapering tasks comply with the following requirements:

(i) Staff members who prepare or serve food shall not change diapers or assist in toilet training.

(ii) Staff members shall not diaper children directly on the floor.

(iii) Staff members shall not leave a child or student unattended on the diapering surface.

(iv) Staff members shall clean and sanitize diapering surfaces after each use, shall use a sanitizer registered by the U.S. Environmental Protection Agency for that purpose and according to the manufacturer's instructions, and shall make sure sanitizer containers are properly labeled and stored in the diaper changing area out of the reach of children and students.

(v) If a disposable covering is used on the diapering surface, a staff member shall properly dispose of the covering after each diaper change.

(vi) Staff members shall wash their hands with soap and water immediately after changing a diaper, and before commencing other tasks.

(vii) Staff members shall place soiled disposable diapers in a container that has a leak proof lining and a tight fitting lid, in a leak proof sealed bag and placed in a container with a tight fitting lid, or placed directly in an outdoor garbage container that has a tight fitting lid. Staff shall clean and sanitize on a daily basis the containers where soiled diapers are placed.

(viii) If cloth diapers are used, staff members shall not rinse them at the school. After a cloth diaper is changed, a staff member shall place the cloth diaper directly into a leak-proof container or into a sealed bag and placed in a container. The container shall be inaccessible to any child and labeled with the child's name. The staff member may also place the diaper into a leak-proof diapering service container.

(ix) A staff member shall check each child's diaper at least once every two hours and shall change any child's diaper 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.

(x) The governing body shall ensure that diaper changing procedures meeting the requirements of this rule are posted in the diaper changing area.

(6) Handwashing Sinks.

(a) Handwashing sinks shall be placed in or immediately adjacent to toilet facilities.

(b) Handwashing sinks shall be located in or conveniently

adjacent to classrooms where normal activities require the students to wash their hands either before or after performing the classroom activities. All elementary classrooms, life skills, art, chemistry, biology, auto shop, wood and metal shop, and drama must have handwashing sinks located in or conveniently adjacent to them. Water provided at these locations must be tempered to or adjustable to a minimum of 100 degrees Fahrenheit (37.8 degrees Celsius) and not exceed 110 degrees Fahrenheit (43.3 degrees Celsius).

(c) Handwashing sinks must be provided at locations where persons are required to handle any liquids that may burn, irritate, or are otherwise harmful to the skin.

(d) Handwashing sinks shall be at a height appropriate to the children that use them.

(e) Handwashing sinks with hot and cold water shall be provided with faucets that utilize a mixing valve or a combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for an average of at least 15 seconds without the need to reactivate the faucet.

(f) Hand cleaning soap or detergent must be conveniently provided near each handwashing sink.

(g) Disposable sanitary towels shall be provided in a protective dispenser that dispenses one towel at a time or a forced-air mechanical hand-drying device providing heated air conveniently located near each handwashing sink. If cloth towels are used for hand drying, a towel or segment of a roll cloth towel that has not been used by another person since it was laundered shall be available for each person.

(h) Handwashing sinks and all related fixtures shall be kept clean and maintained in good repair.

(7) Shower Facilities.

(a) Shower Construction.

(i) Showers for classes in physical education shall be provided if students are required to change clothes. Each shower must be provided with hot and cold water utilizing a mixing valve or combination faucet. Nothing in this section shall prohibit the use of water temperature controls to ensure the safety of the student. A non-skid surface must be installed on shower floors and adjacent floor areas. Shower room walls and ceilings shall be constructed with light colored, smooth, nonabsorbent, and easily cleanable materials.

(ii) At least one shower head shall be provided for each 15 students utilizing any adjacent dressing area at any one time. A supply of liquid soap for showering must be provided.

(iii) At least two privacy showers must be provided for schools constructed after January 1, 2012.

(iv) A dressing room area with non-skid floors and floor drains shall be provided adjacent to shower facilities. Showers shall be constructed to prevent water flow into the drying and dressing room area. Hard surfaced or materials that cannot absorb water must be used for floors, benches, and other furniture in dressing rooms.

(v) The shower area dressing room shall be mechanically ventilated to the outside of the building and a system to resupply the air that is exhausted must be installed.

(vi) Toilet rooms and towel racks shall be located convenient to shower and dressing rooms.

(b) Shower Room Cleaning and Maintenance.

Showers, dressing rooms, and adjacent areas shall be kept clean and free of clutter. Shower room walls and ceilings shall be kept clean and maintained in good repair. Shower floors shall be cleaned and disinfected daily after school activity use.

(c) Shower Supplies.

If students are provided with towels, the towels shall be laundered at least weekly and shall not be shared with another student.

(8) Drinking Fountains.

(a) Drinking fountains shall provide a water stream of at least a 2 inch arch into the basin.

(b) Fountains shall be kept clean and in good repair.

(c) Drinking fountains are prohibited in areas where contamination from human wastes or toxic or hazardous materials is likely to occur, including toilet rooms and laboratories.

(d) Drinking fountains shall be installed so the height of the drinking fountain is at the drinking level convenient to students utilizing the drinking fountain.

(e) Drinking fountains shall be conveniently located and easily accessible for all recreational facilities and areas utilized for school functions.

(f) Single service and multi use cups provided by the school must meet the requirements of R392-100.

(9) Swimming Pools.

Swimming pools at school facilities must be constructed, operated, and maintained in accordance with R392-302.

(10) Waste Collection, Storage and Disposal.

(a) Waste containers shall be provided in each classroom.

(b) For shops, chemistry labs, and similar areas, separate waste containers shall also be provided for each type of waste material not allowed to be disposed with regular municipal waste.

(c) Solid wastes shall be kept in durable, easily cleanable, insect-resistant and rodent-resistant containers that do not leak and do not absorb liquids.

(d) A sufficient number and size of containers must be provided to hold all the garbage, refuse, and other waste accumulated between the times when the containers are emptied.

(e) The governing body shall direct school personnel to clean and repair or replace all waste containers at a frequency that will prevent odors and prevent insect and rodent attraction. Hot water at a minimum of 110 degrees Fahrenheit (43.3 degrees Celsius) and detergent or steam must be provided for washing waste containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage and shall not be allowed to enter any storm drain.

(f) Storage.

(i) Waste materials stored on the premises must be located to minimize access to insects, rodents, and other animals and not cause a nuisance. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material that contains no garbage or food wastes need not be stored in covered containers, if such material is protected in an enclosure or baled.

(ii) Tight-fitting lids, doors, or covers shall be provided on waste containers, refuse bins, compactors, and compactor systems. The lids, doors, or covers shall be kept closed except when emptying or filling. Containers, refuse bins, compactors, and compactor systems used by the school shall be easily cleanable and maintained in good repair. Containers designed with drains shall have drain plugs in place except during cleaning.

(iii) If waste storage rooms are used, the rooms shall have walls, floors, and ceilings constructed with easily cleanable, nonabsorbent, washable materials that are clean and in good repair. The doors of storage rooms shall be fitted to reduce the entrance of rodents and insects.

(iv) Outside storage areas or enclosures shall be constructed of easily cleanable materials and shall be kept clean and maintained in good repair. Outside waste containers, refuse bins and compactor systems shall be stored on or above a smooth surface of cleanable material, such as concrete or asphalt, that is kept clean and maintained in good repair.

(g) Disposal.

(i) Waste shall be disposed of often enough to prevent the

development of odor and minimize the harborage of insects or rodents.

(ii) The disposal of all waste shall comply with all Utah Division of Solid and Hazardous Waste rules and local health department regulations.

(11) Hazardous Wastes.

All hazardous and regulated waste disposal shall comply with the Utah waste management rules and applicable local regulations.

(12) Pest Management.

(a) The governing body shall minimize in school buildings or on school grounds the presence of pests that are vectors for disease, carry allergens that are likely to affect individuals with allergies or respiratory problems, or may sting or bite causing mild to serious reactions in some individuals.

(b) The governing body shall adopt integrated pest management (IPM) practices and principles to prevent unacceptable levels of pest activity with the least possible hazard to people, property, and the environment.

(c) The governing body shall have a written integrated pest management plan written by the governing body or provided by the contracted pest management contractor whether IPM is implemented as an internal process or contracted to a pest management professional. The plan shall include sections that cover the following topics: an IPM policy statement; IPM implementation and education; pest identification, monitoring procedures, reporting and control practices; approved pesticides; procedures for pesticide use; a policy for the notification of students, parents, and staff; and applicator requirements. Guidance for an IPM plan can be found in publications of the IPM Institute of North America. The Department or the Local Health Officer may require changes in a school's IPM plan if the plan neglects or causes a threat to the health or safety of the occupants of a school.

(d) The governing body shall use non-chemical management methods whenever possible to provide the desired control. The governing body shall use a full range of control alternatives including: identification and removal or repair of conditions that are conducive to pests; structural repair and sealing; improved sanitation; removal of clutter or harborage; elimination of food sources; exclusionary measures to protect doors, windows and any other opening to the outside against the entrance of insects, rodents, and other animals. A no-action alternative shall also be considered in cases where the pest has no public health or property damage significance.

(e) If the governing body chooses to not use a contracted pest control contractor, school personnel who apply pesticides shall follow the Utah Dept. of Agriculture pesticide regulation R68-7. The applicator shall apply all products according to the pesticide label directions.

R392-200-8. Construction and Maintenance of Physical Facilities.

(1) Floors, Walls, and Ceilings.

All school building floors, walls, and ceilings shall be constructed with materials that are durable and easily cleanable. Floors, walls, and ceilings shall be clean and in good condition.

(2) Lighting.

(a) Lighting in all parts of the school building shall have the capability to provide at least the minimum required illumination levels listed in Table I when the building is in use. Permanently fixed artificial light sources must be provided.

TABLE 1

MINIMUM REQUIRED ILLUMINATION LEVELS

Task or Area	Footcandle Level/Lux
General instructional areas: Study halls,	

art rooms, lecture rooms, libraries, and other areas 50/538

Special instructional areas: Drafting rooms, laboratories, shops, and other rooms where some fine detail work is done 100/1076

Special instruction areas: Sewing and other rooms where fine detail work is done 100/1076

Gymnasiums: Auxiliary spaces, shower rooms and locker rooms 30/323

Gymnasiums: Main recreation spaces 50/538

Auditoriums, faculty and staff lunchrooms, assembly and multi-purpose rooms, and similar areas not used for classrooms 30/323

Corridors, stairs, hallways, passageways, storerooms, and similar areas 10/108

Toilet rooms 10/108

Offices 50/538

(b) All light fixtures located in shops, life skills, cafeterias, kitchens, food preparation areas, toilet rooms, shower areas, locker rooms, and gymnasiums shall have protective shields to contain broken glass if the bulb or tube is broken or shattered.

(c) School personnel or contracted persons shall clean and repair light fixtures and replace burned out bulbs or lamps as often as necessary in order to maintain the illumination levels required in this section.

(3) Ventilation.

(a) Ventilation throughout the school must be in accordance with the requirements of the mechanical code adopted by the Utah Legislature under Section 15A-2-103.

(b) Air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials. Vehicles must be prohibited from parking in areas adjacent to and close enough to building air intakes to create a vehicle exhaust hazard and nuisance inside the structure.

(4) Heating and Cooling.

(a) Heating facilities must be installed, vented and maintained in a safe working condition. Portable combustion type space heaters are prohibited.

(b) During cold weather, the governing body shall maintain the occupied areas of the school building at a temperature between 68 and 74 degrees Fahrenheit (20 and 26.3 degrees Celsius). Occupied areas of school buildings used for school activities which because of the nature of the activities require a temperature different from that of a classroom such as ice skating, aerobics, and swimming shall be maintained at the appropriate temperature for the activity. Temperatures shall also be maintained at an appropriate range for any students who qualify under the Individuals with Disabilities Education Act.

(c) During periods of hot weather when the outside temperature is 90 F or higher when school is in session, the governing body shall employ either an automatic temperature monitoring system or a written plan executed by assigned staff to monitor the temperature of each occupied classroom, occupied auditorium, and occupied gymnasium in a school building. The equipment used for temperature monitoring must have a full range accuracy of plus or minus two degrees

Fahrenheit (1.1 degrees Celsius). The frequency of temperature measurement may vary in the programming of the automatic system or in the staff executed temperature monitoring plan based on outside temperatures but must be often enough to assure that occupied areas don't exceed temperature maximums.

(i) If the temperature readings taken in the classrooms, auditorium, or gymnasium are above 90 degrees Fahrenheit (36.3 degrees Celsius), the time shall be recorded and the temperature continuously monitored by the automatic system or the person measuring the temperature. If the temperature remains above 90 degrees Fahrenheit (36.3 degrees Celsius) for 90 consecutive minutes, the automatic system or person performing the monitoring shall alert the person in charge of the school and the person in charge shall order the removal of all students from the affected areas of the school. The governing body shall not allow students to return to affected areas until the temperature is at or below 79 degrees Fahrenheit (26.1 degrees Celsius). If there are insufficient areas of the school to accommodate students at temperatures below 90 degrees Fahrenheit (36.3 degrees Celsius), then school officials shall provide an alternative environment that meets the above temperature requirement such as providing alternative instructional activities or employing portable cooling equipment. School officials shall notify parents of children with special health care needs.

(ii) The governing body shall have a written plan that identifies any groups of students that are unusually vulnerable to elevated temperatures and describes actions that will be taken when the recorded temperature in occupied classrooms, auditoriums or gymnasiums reaches 80 degrees Fahrenheit (26.7 degrees Celsius) and above. The written plan may be part of the school's emergency response plan.

(5) Maintenance of Heating, Ventilation and Air Conditioning Equipment.

(a) The governing body shall have qualified in-house or contracted service technicians conduct a heating, ventilating, and air-conditioning system inspection and necessary maintenance activities according to manufacturer recommendations at proper time intervals.

(b) If the school has a boiler or other mechanical units required to be inspected and certified for use, the governing body shall make sure that the most recent boiler inspection certificate is posted in the boiler room. The certificate must be issued by the Utah Division of Boiler and Elevator Safety or an inspector who has been approved and deputized by the Division of Boiler and Elevator Safety.

(6) Cleaning Physical Facilities.

(a) The governing body shall make sure that floors, walls, ceilings, and attached equipment are kept clean.

(b) In new or extensively remodeled schools, at least one utility sink or curbed floor sink shall be located on each floor. The governing body shall make sure personnel who perform cleaning tasks use this area for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of handwashing sinks for this purpose is prohibited.

(7) Custodian Closets.

(a) Custodial closets, equipment and supply storage rooms shall be kept clean and orderly and shall be kept locked if toxic supplies are present.

(b) Storerooms or cabinets shall be provided for cleaning materials, pesticides, paints, flammables, or other hazardous or toxic chemicals, and for tools and maintenance equipment. Materials incompatible due to potential contamination or potential chemical reactions shall be separated from one another. These areas shall be kept locked and not used for any other purpose that is incompatible with the materials stored and shall comply with the fire code and any state amendments to the fire code that have been adopted by the Utah State Legislature.

(c) Oiled mops, dust cloths, rags, and other materials subject to spontaneous combustion shall be properly stored in approved fire resistant containers as required by the fire code and any state amendments to the fire code that have been adopted by the Utah State Legislature.

R392-200-9. Health and Safety.

(1) Health.

(a) A centrally located room or area for emergency use in providing care for persons who are ill, injured or suspected of having any contagious disease must be located in each school. In schools built after 1987, a clinic room must be provided and shall have a handwashing sink with hot and cold running water, soap, individual towels, first aid supplies, and lockable cabinet space for storage of first-aid supplies. Clinic rooms or areas used for emergency treatment and first-aid shall be kept clean and maintained in good repair. The governing body shall have a written plan or policy available for review upon request by the local health department that states how a nurse or doctor can be contacted at any time the school is in session. Prior agreement shall have been made with the doctor or nurse to ensure availability. In addition, at least two designated individuals shall be on site that have a current Red Cross basic first aid and CPR certificate or equivalent training approved by the governing body.

(b) The governing body of each school shall ensure that:

(i) each emergency care room or clinic area is provided with a cot or bed that has a cleanable surface or cover;

(ii) disposable bedding is changed after each person's use; and

(iii) multi-use sheets or covers are laundered after each person's use.

(c) All prescription or over the counter medication administered by school personnel, and records required by 53A-11-601 shall be stored in a secure refrigerator, drawer, or cabinet accessible only by those authorized to administer the medication.

(d) If a school has specified sleeping areas, the school shall provide these areas with cots, mats, or floor pads. Reusable covers supplied by the school must be easily cleanable and maintained in good repair. When in use, the covers must be cleaned between each user and at least weekly. Disposable covers must be discarded after each use.

(e) In high risk injury areas including shops, laboratories, places where theater props and scenery are built, life skills, playgrounds, and gymnasiums, the instructor must possess at a minimum, a current Red Cross basic first-aid certificate, or equivalent as determined by the governing body, and must be on site at all times when classes are being held. A readily accessible first-aid kit that is appropriate for the risks in the area must be available at the school. School buses shall also carry a first aid kit and bus drivers shall have a current Red Cross basic first aid certificate, or equivalent training as determined by the governing body.

(2) Safety.

(a) Instructional, athletic, or recreational equipment shall be kept clean, safe, and in good repair.

(b) Playground equipment shall be installed and maintained in accordance with the Handbook for Public Playground Safety, U.S. Consumer Product Safety Commission, Publication Number 325, April 2008 Revision.

(c) Handrails on stairways, ramps, and outside steps shall be in compliance with the building code adopted by the Utah Legislature under Section 15A-2-103, and shall be properly maintained.

(d) A master shut-off valve to flammable gas supply lines in science laboratories, life skills areas, shops, and other rooms that utilize gas supply lines, shall be readily accessible to instructors for emergency shut off.

(e) A master electric shut off switch shall be readily accessible to instructors in life skills areas, shop classrooms, applicable art rooms, and labs where electrically operated instructional equipment are present that may be a safety hazard to the operator.

(f) All instructional shop classrooms, art rooms, craft rooms, and laboratories shall be kept clean and maintained in good condition. Cleaning and sweeping of these rooms shall be done in a way to minimize dust.

(g) The governing body of the school shall ensure that specific safety directions accompany substances that are deemed potentially harmful or hazardous to the health and safety of individuals who use them. The directions shall include the proper use, storage, handling and disposal of the substance and the potential risks or hazards associated with the substance. Designated personnel shall ensure that Material Safety Data Sheets (MSDS) for all chemicals used at the school are available at all times for review by staff or students that use the product and for review by the local health or safety inspectors during inspections.

(h) In high risk injury areas, the class instructor shall ensure that provisions, including the development and posting of operating instructions, regulations, or procedures are posted and reviewed by students in these areas. Students must demonstrate to the instructor knowledge of and safety practices for each piece of equipment prior to any use by the student. The instructor shall ensure that all safety guards are in place and operational on shop equipment.

(i) The class instructor shall train and direct students operating power equipment to not wear loose clothing including ties, lapels, cuffs, torn clothing or similar garments that can become entangled in power equipment.

(ii) The class instructor shall train and direct students that wrist watches, rings, or other jewelry are not to be worn in any class where they constitute a safety hazard.

(iii) The class instructor shall train and direct students to restrain their hair if there is a risk of hair entanglement in moving parts of power equipment.

(iv) The governing body shall sufficiently control exposure to noise, toxic dusts, gases, mists, fumes, or vapors so that a health hazard does not occur.

(v) The class instructor shall ensure that appropriate safety equipment is available and train and direct students to wear it while engaged in activities where there is exposure to hazardous conditions.

(vi) Safety zones shall be outlined on the floor around areas of equipment where there is danger of possible injury to students.

(vii) Emergency shower or eyewash stations shall be readily available in areas where there is a potential for accidental exposure to corrosive, poisonous, infectious, or irritating materials. The area around this safety equipment shall be kept free of clutter and encumbrances to its immediate use. The design and installation of emergency shower and eyewash stations shall meet the plumbing code adopted by the Utah legislature under Section 15A-2-103.

(i) Poisonous, dangerous or otherwise harmful plants or animals shall not be kept on the school premises unless it is in conjunction with a course curriculum. Poisonous or toxic plants must be labeled with their scientific name, and a warning sign posted describing the health risks and first aid instructions for skin contact or ingestion. A warning sign shall be posted on the confining area of animals which are likely to carry disease; the sign shall state the disease causing organisms the animal is likely to be infected with and precautions to people should take to avoid disease.

(j) Flammable liquids, must be stored in a locked fire resistant area with access only by school assigned personnel. The storage area shall comply with the Utah state fire code and

rules.

(k) Oxygen, acetylene, and other high pressure cylinders shall be secured, including empty cylinders, from tipping over. Safety valve hoods shall be kept in place when the tanks are not in use. Unless staged on a welding cart for use, empty or full oxygen and acetylene gas cylinders must be segregated by at least 20 feet or by a fire wall with a 30 minute rating at least five feet high.

(l) No flammable, explosive, toxic, or hazardous liquids, gases, or chemicals shall be placed, stored, or used in any building or part of a building used for school purposes, except in approved quantities as necessary for use in laboratories, instructional shop classes, and utility rooms. Hazardous liquids or gases shall be stored in tightly sealed containers and hazardous liquids, gases, and chemicals shall be stored in locked safety cabinets or locked storage rooms when not in use.

(m) Electrical wiring and components shall be maintained in good repair. Electrical panels must maintain a three foot clearance free of obstructions.

R392-200-10. Access.

The local health department representative, after showing proper identification, shall be granted access to enter any school at any reasonable time for the purpose of making inspections to determine compliance with this rule.

KEY: public health, schools

August 26, 2013

Notice of Continuation January 20, 2012

26-15-2

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.

R398-15. Autism Treatment Account.

R398-15-1. Purpose and Authority.

The purpose of this rule is to identify criteria and procedures for selecting children who may qualify for assistance from the account and identify qualifications, criteria, and procedures for selecting service and treatment providers that receive disbursements from the Autism Treatment Restricted Account.

This rule is authorized by Section 26-52-202(4) which provide that the Autism Treatment Account Advisory Committee, hereafter known as the "Committee", may make rules governing the Committee's activities.

R398-15-2. Qualification Criteria and Procedures for Selecting Children Who May Qualify for Assistance from the Account.

(1) Qualification Criteria

- a. Child who is at least two but younger than seven years of age upon enrollment,
- b. Resident of Utah,
- c. Diagnosed by a qualified professional as having an autism spectrum disorder, and
- d. Have a need that can be met within the requirements of UCA 26-52,
 - i. Must need and be able to receive a minimum of six months of applied behavior analysis (ABA) therapy, and
 - ii. Cannot be receiving formal ABA therapy services from other state funded sources under this law (Medicaid Waiver or PEHP) or ABA therapy for a minimum of 20 hours per week covered at 80 percent or more of cost of treatment by other insurance while receiving services funded through this account.

(2) Procedures for selecting children

- a. Providers selected through the request for application (RFA) process are responsible for enrollment and determining if a child meets qualification criteria utilizing UDOH enrollment forms for children
- b. If applications for enrollment of children exceeds capacity of this funding, providers shall select children using a random process

R398-15-3. Qualifications, Criteria and Procedures for Evaluating Service and Treatment Providers to Include in the Program.

(1) Providers are qualified to receive funds if:

- a. They utilize ABA for treatment alone or in conjunction with other proven effective treatments as outlined in an RFA process;
- b. Treatment is provided by or supervised by a board certified behavior analyst or licensed psychologist with equivalent university training and supervised experience who is working toward board certification in ABA;
- c. They are willing to collaborate with existing telehealth networks to reach children in rural and underserved areas of the state;
- d. They utilize methods to engage family members in the treatment process; and
- e. They agree to serve and treat only eligible children with this funding.

(2) Procedures for evaluating providers

- a. Funding requests to the Committee from providers will be made on a standard RFA which will be developed and authorized by the Committee and made available by the Department
- b. Providers that meet the minimum requirements in Subsection 3.1., will be evaluated for funding by a review committee.
- c. Criteria used to select providers for funding will

include:

- i. Per eligible child cost for treatment proposed by provider;
- ii. Provider or organization's background and qualifications;
- iii. Description of treatment and services to be provided;
- iv. Additional consideration will be given to those with existing connections to telehealth or evidence of written policies and procedures for providing ABA services via telehealth; and
- v. Additional consideration will be given to those who show evidence of providing services in rural and underserved communities.

(3) Funded providers will submit required reports as outlined in the RFA to UDOH/Committee on use of funds, two of which shall include:

- a. Detailed description of how provider will report evaluation of benefits and outcomes for children receiving services; and
- b. Monthly invoice and justification of expenditures consistent with uses as specified in UCA 26-52.

(4) RFAs will be authorized contingent on funds available.

R398-15-4. Conflict of Interest within the Advisory Committee.

(1) Committee members will sign a conflict of interest form identifying affiliations with providers that apply for funding from the Autism Treatment Account, and/or known family members that may receive treatment or evaluation services directly funded through the Autism Treatment Account from a provider that has submitted an application for funding. The conflict of interest form will be signed prior to review of funding requests.

(2) If an issue is to be decided by the Advisory Committee that involves potential conflict of interest with a member of the committee, it is the responsibility of the member to:

- a. Identify the potential conflict of interest.
- b. Not participate in discussion of the program or motion being considered.
- c. Not vote on the issue.

(3) It is the responsibility of the Committee to:

- a. Award funds based on quality of application regardless of committee affiliation.
- b. Record in the minutes of the Advisory Committee Meeting the potential conflict of interest, and the use of the procedures and criteria of this policy.

KEY: autism treatment, applied behavior analysis (ABA), autism spectrum disorders

August 27, 2013

26-52-201

26-52-202

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.

R398-20. Early Intervention.

R398-20-1. Authority and Purpose.

This rule implements the early intervention program under Part C of the Individuals with Disabilities Education Act (IDEA) and implementing regulations found at 34 CFR 303.500 for children with disabilities under three years of age, and their families. It is authorized by Utah Code Section 26-10-2.

The Utah Department of Health is designated as the lead agency responsible for the administration of the program.

R398-20-2. Services.

(1) The Department provides the following services to eligible individuals and their families, based on individual assessment as required by the IDEA implementing regulations:

- (a) Assistive technology;
- (b) Audiology services;
- (c) Family training, counseling, and home visits;
- (d) Health services;
- (e) Medical services, but only for diagnostic or evaluation purposes;
- (f) Nursing services;
- (g) Nutrition services;
- (h) Occupational therapy;
- (i) Physical therapy;
- (j) Psychological services;
- (k) Service Coordination;
- (l) Social work services;
- (m) Special instruction;
- (n) Speech-language pathology services;
- (o) Transportation; and
- (p) Vision services.

(2) Infants and toddlers from birth through to thirty-six months who are classified according to IDEA requirements as a person with a disability are eligible to receive services. These include children with a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay or who show delays at or below 1.5 Standard Deviations below the mean, or at or below the 7th percentile in one or more areas of development.

(3) Services must be based on the child's written Individualized Family Service Plan (IFSP) for providing services developed according to IDEA requirements.

R398-20-3. Fees.

(1) The parents of a eligible child shall pay a monthly fee for services according to the schedule established in the Fee Table. The monthly fee is applicable for any month in which a service is provided or scheduled and not timely canceled, except for the month in which the child attains 36 month of age. The Department shall not charge a fee for the following IDEA activities and services:

- (a) implementation of child find, such as child developmental screening, or public awareness activities;
- (b) evaluation and assessment;
- (c) service coordination;
- (d) activities to assist a child and the family to receive the rights, procedural safeguards, and authorized services;
- (e) activities related to the development, review and evaluation of the Individual Family Service Plan;
- (f) activities related to child and family rights, including the administrative complaint process and mediation; and
- (g) specialized services related to sensory loss provided through the Utah Schools for the Deaf and Blind (USDB) Parent Infant Program or Deaf Blind services.

(2) The Department shall not charge a fee for services to a child if:

(a) the child receives services only though the USDB pursuant to an ISFP;

(b) the child is a ward of the state; or

(c) the child's family meets Head Start income eligibility guidelines.

(4) The Department shall not charge a fee for services if the child or the child's family receives benefits under any of the following programs:

- (a) Medicaid;
- (b) Temporary Assistance to Needy Families (TANF);
- (c) Women Infants and Young Children (WIC);
- (d) Refugee Resettlement Program (RCA); and
- (e) Primary Care Network (PCN).

(3) The fee is a per family fee without regard to the number of eligible children receiving services.

(5) The monthly fee is as follows:

TABLE FEES			
Percent of poverty	186	200	250
Family fee	10.00	20.00	30.00
ANNUAL INCOME			
Family size			
2	22,543.00 or less	22,543.01-24,240.00	24,240.01-30,300.00
3	28,384.00 or less	28,384.01-30,520.00	30,520.01-38,150.00
4	34,224.00 or less	34,224.01-36,800.00	36800.01-46,000.00
5	40,064.00 or less	40,064.01-43,080.00	43,080.01-53,850.00
6	45,905.00 or less	45,905.01-49,360.00	49,360.01-61,700.00
7	51,745.00 or less	51,745.01-55,640.00	55,640.01-69,550.00
8	57,586.00 or less	57,586.01-61,920.00	61,920.01-77,400.00
Add for each additional family member	5,840.00	6,280.00	7,850.00

PART TWO OF TABLE			
Percent of poverty	300	400	500
Family fee	40.00	50.00	60.00
ANNUAL INCOME			
Family size			
2	30,300.01-36,360.00	36,360.01-48,480.00	48,480.01-60,600.00
3	38,150.01-45,780.00	45,780.01-61,040.00	61,040.01-76,300.00
4	46,000.01-55,200.00	55,200.01-73,600.00	73,600.01-92,000.00
5	53,850.01-64,620.00	64,620.01-86,160.00	86,160.01-107,700.00
6	61,700.01-74,040.00	74,040.01-98,720.00	98,720.01-123,400.00
7	69,550.01-83,460.00	83,460.01-111,280.00	111,280.01-139,100.00
8	77,400.01-92,880.00	92,880.01-123,840.00	123,840.01-154,800.00
Add for each additional	9,420.00	12,560.00	15,700.00

family member

PART THREE OF TABLE

Percent of poverty	600	700
Family fee	80.00	100.00
Family size	ANNUAL INCOME	
2	60,600.01-72,720.00	72,720.01-84,840.00
3	76,300.01-91,560.00	91,560.01-106,820.00
4	92,000.01-110,400.00	110,400.01-128,800.00
5	107,700.01-129,240.00	129,240.01-150,780.00
6	123,400.01-148,080.00	148,080.01-172,760.00
7	139,100.01-166,920.00	166,920.01-194,740.00
8	154,800.01-185,760.00	185,760.01-216,720.00
Add for each additional family member	18,840.00	21,980.00

R398-20-4. Income Reporting-Fee Determination.

(1) The child's family shall annually report the family income using the Fee Determination Form to determine the monthly family fee. The IFSP team shall review the form at its six-month review. The family may submit an updated form if there is a change in income.

(2) The Fee Determination Form provides guidelines to the family on what should be counted in its report of income.

(3) Completion of the form is voluntary. However, a child's parents who choose not to complete the Fee Determination Form must pay the maximum level on the fee schedule.

(4) Upon request, the family must provide a copy of the most recent federal income tax filing to the Department and its early intervention providers to verify family income as reported by the child's parents. If the federal income tax filing is unavailable, the parents may submit the prior three months' check stubs to extrapolate annual income.

R398-20-5. Hardship, Extenuating Circumstances.

(1) An eligible child shall not be denied service because of a family's inability to pay. If a family is able to pay, but chooses not to, the Department may withhold services.

(2) The Department may waive all or part of the fee if there are extenuating family circumstances that affect a family's ability to pay, such as long-term hospitalization of a family member, casualty loss, moving expense, or other unusual expenses.

**KEY: early intervention, education, disabilities
August 6, 2003
Notice of Continuation August 2, 2013**

26-10-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-1. Utah Medicaid Program.****R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered

within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

The Department incorporates the July 1, 2013 versions of the following by reference:

(1) Utah State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Definitions found in the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Services Utah Medicaid Provider Manual;

(6) Audiology Services Utah Medicaid Provider Manual;

(7) Hospice Care Utah Medicaid Provider Manual;

(8) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(9) Personal Care Utah Medicaid Provider Manual with its attachments;

(10) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual;

(11) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(16) Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual;

(17) Office of Inspector General Administrative Hearings Procedures Manual;

(18) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(19) Coverage and Reimbursement Code Look-up Tool for online use at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>;

(20) Certified Nurse - Midwife Services Utah Medicaid Provider Manual;

(21) CHEC Services Utah Medicaid Provider Manual with its attachments;

(22) Chiropractic Medicine Utah Medicaid Provider Manual;

(23) Dental Services Utah Medicaid Provider Manual;

(24) General Attachments for the Utah Medicaid Provider Manual;

(25) Indian Health Utah Medicaid Provider Manual;

(26) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(27) Medical Transportation Utah Medicaid Provider Manual;

(28) Mental Health Centers/Prepaid Mental Health Plans Utah Medicaid Provider Manual;

(29) Non-Traditional Medicaid Health Plan Utah

Medicaid Provider Manual with its attachments;

(30) Certified Family Nurse Practitioner and Pediatric Nurse Practitioner Utah Medicaid Provider Manual;

(31) Oral Maxillofacial Surgeon Services Utah Medicaid Provider Manual;

(32) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual;

(33) Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments;

(34) Podiatric Services Utah Medicaid Provider Manual;

(35) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(36) Psychology Services Utah Medicaid Provider Manual;

(37) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(38) Rehabilitative Mental Health Services for Children Under Authority of Department of Human Services, Division of Child and Family Services or Division of Juvenile Justice Services Utah Medicaid Provider Manual;

(39) Rural Health Clinic Services Utah Medicaid Provider Manual with its attachments;

(40) School-Based Skills Development Services Utah Medicaid Provider Manual;

(41) Section I: General Information of the Utah Medicaid Provider Manual;

(42) Services for Pregnant Women Utah Medicaid Provider Manual;

(43) Substance Abuse Treatment Services and Targeted Case Management Services for Substance Abuse Utah Medicaid Provider Manual;

(44) Targeted Case Management for CHEC Medicaid Eligible Children Utah Medicaid Provider Manual;

(45) Targeted Case Management for the Chronically Mentally Ill Utah Medicaid Provider Manual;

(46) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual; and

(47) Vision Care Services Utah Medicaid Provider Manual.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services;

- (i) intermittent or part-time nursing services provided by a home health agency;
- (ii) home health aide services by a home health agency; and
- (iii) medical supplies, equipment, and appliances suitable for use in the home;
- (m) private duty nursing services for children under age 21;
- (n) clinic services;
- (o) dental services;
- (p) physical therapy and related services;
- (q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;
- (r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;
- (s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;
- (t) services for individuals age 65 or older in institutions for mental diseases:
 - (i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;
 - (ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and
 - (iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;
- (u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;
- (v) inpatient psychiatric facility services for individuals under 22 years of age;
- (w) nurse-midwife services;
- (x) family or pediatric nurse practitioner services;
- (y) hospice care in accordance with section 1905(o) of the Social Security Act;
- (z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;
 - (aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;
 - (bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and
 - (cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:
 - (i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;
 - (ii) transportation services;
 - (iii) skilled nursing facility services for patients under 21 years of age;
 - (iv) emergency hospital services; and
 - (v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.
 - (dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:
 - (i) it is medically necessary and more appropriate than any

Medicaid covered service; and

- (ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

(2) An alien who is prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on his Medical Identification Card, as noted in Rule R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Superior System Waiver in effect at the time service was rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

- (a) excluded as a Medicaid benefit by rule or contract;
- (b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or
- (c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider

letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

(e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah

Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific

rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Cost Sharing.

(1) An enrollee is responsible to pay the:

(a) hospital a \$220 coinsurance per year;

(b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;

(c) provider a \$3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and

(d) pharmacy a \$3 copayment per prescription up to a maximum of \$15 per month;

(2) The out-of-pocket maximum payment for copayments for physician and outpatient services is \$100 per year.

(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.

(4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;

(a) children;

(b) pregnant women;

(c) institutionalized individuals;

(d) American Indians; and

(e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.

R414-1-29. Provider-Preventable Conditions.

(1) In accordance with 42 CFR 447.26, October 1, 2011

ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

(a) Rule R380-200;

(b) Rule R380-210;

(c) Rule R386-705;

(d) Rule R428-10; and

(e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

KEY: Medicaid

August 7, 2013

Notice of Continuation March 2, 2012

26-1-5

26-18-3

26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-51. Dental, Orthodontia.****R414-51-1. Introduction and Authority.**

(1) The Medicaid Orthodontia Program provides orthodontia services for Medicaid eligible children who have a handicapping malocclusion as a result of birth defects, accident, or abnormal growth patterns, and for Medicaid eligible pregnant women who have a handicapping malocclusion as a result of a recent accident or disease, of such severity that they are unable to masticate, digest, or benefit from their diet.

(2) Orthodontia services are authorized by 42 CFR 440.100(a), 440.225, 441.56(b)(2), 441.57, October, 1997 ed, which are adopted and incorporated by reference.

R414-51-2. Definitions.

In addition to the definitions in R414-1, the following definitions also apply to this rule:

(1) "Adult" means an individual who is 21 years of age or older.

(2) "Child" means an individual who is under 21 years of age.

(3) "Salzmann's Index" means the "Handicapping Malocclusion Assessment Record" by J. A. Salzmann, used for assessment of handicapping malocclusion, as adopted by the Board of Directors of the American Association of Orthodontists and the Council on Dental Health of the American Dental Association. This index provides a universal numerical measurement of the total malocclusion.

R414-51-3. Client Eligibility Requirements.

Orthodontia services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

R414-51-4. Program Access Requirements.

(1) Orthodontia services are available to children who meet the requirements of having a handicapping malocclusion identified in an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) exam.

(2) The Department shall determine medical necessity for orthodontia services based upon:

(a) evaluation of the malocclusion using the Salzmann's Index from models of the teeth submitted by the dentist or orthodontist; and

(b) evidence of medical necessity provided by the primary dentist, orthodontist, or physician.

(3) The primary care physician, or the physician or dentist who completes the EPSDT screening examination, may contribute information pertaining to the medical necessity for services.

(4) Qualified providers include dentists, orthodontists, and oral and maxillofacial surgeons.

R414-51-5. Service Coverage.

(1) Medicaid considers a Salzmann's Index score of 30 or higher a level of handicapping malocclusion for which orthodontia is a covered service.

(2) Service coverage includes:

(a) a wax bite and study models of the teeth;

(b) removal of teeth, or other surgical procedures, if necessary to prepare for an orthodontic appliance;

(c) attachment of an orthodontic appliance;

(d) adjustments of an appliance; and

(e) removal of an appliance.

R414-51-6. Limitations.

Medicaid does not cover orthodontia for:

(1) cosmetic or esthetic reasons;

(2) dental surgical procedures which are cosmetic even when performed in conjunction with orthodontia;

(2) treatment of any temporo-mandibular joint condition or dysfunction; or

(3) conditions in which radiographic evidence of bone loss has been documented.

R414-51-7. Reimbursement.

(1) Fees for services for which the Department will pay orthodontists are established from the physician's fees for CPT or CDT codes as described in the State Plan, Attachment 4.19-B.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

KEY: Medicaid, dental, orthodontia

August 14, 2013

Notice of Continuation April 30, 2013

26-1-5

26-18-3

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

(f) 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)(a) Fingerprint cards are not required if:

(i) the covered individual has resided in Utah continuously for the past five years, or is less than 23 years of age and has resided in Utah continuously since the individual's 18th birthday; and

(ii) The covered individual will only be involved with child care in a facility that was licensed or certified prior to 1 July 2013,

(b) A covered individual who has previously submitted a fingerprint card under this section for a national criminal history record check and has resided in Utah continuously since that time is not required to submit a fingerprint card.

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
September 1, 2013**

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, including child sexual abuse, 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, including child sexual abuse, 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.

**KEY: child care facilities, residential certification
September 1, 2013
Notice of Continuation May 29, 2013**

26-39

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 Less than 18"	Preschoolers Less than 20"	School Age Less than 30"
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(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, including child sexual abuse, 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 relicensure 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, including child sexual abuse, 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

(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 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 handwashing 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
September 1, 2013**

Notice of Continuation May 29, 2013

26-39

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 accidentally 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"
	Allowed	Allowed	Allowed	Allowed	

(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	Engineered	Double Shredded

Pivot Point	Wood Fibers	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, including child sexual abuse, 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, including child sexual abuse, 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
September 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, including child sexual abuse, 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 relicensure 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, including child sexual abuse, 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.

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

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

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
September 1, 2013
Notice of Continuation May 29, 2013**

26-39

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 accidentally 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	
	6"	6"	6"	6"	6"	6"	6"	6"	6"	6"
4' high or less	6"	6"	6"	6"	6"	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"	6"	6"	6"	6"	6"
Over 5' up to 6'	12"	12"	6"	12"	6"	6"	6"	6"	6"	6"
Over 6' up to 7'	12"	not allowed	9"	not allowed	9"	not allowed	9"	not allowed	9"	6"
Over 7' up to 8'	12"	not allowed	12"	not allowed	12"	not allowed	12"	not allowed	12"	6"
Over 8' up to 9'	12"	not allowed	12"	not allowed	12"	not allowed	12"	not allowed	12"	6"
Over 9' up to 10'	not allowed	not allowed	12"	not allowed	12"	not allowed	12"	not allowed	12"	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	not allowed	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	not allowed	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	
	6"	6"	6"	6"	6"	6"
4' high or less	6"	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	6"	6"	6"	6"	6"
Over 6' up to 7'	9"	9"	9"	9"	9"	9"
Over 7' up to 8'	12"	9"	9"	9"	9"	9"
Over 8' up to 9'	12"	9"	9"	9"	9"	9"
Over 9' up to 10'	12"	9"	9"	9"	9"	9"
Over 10' up to 11'	12"	12"	12"	12"	12"	12"
Over 11'	12"	not allowed	not allowed	not allowed	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 Less than 18"	PRESCHOOLERS Less than 20"	SCHOOL AGE Less than 30"
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(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,

including child sexual abuse, 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 relicensure 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, including child sexual abuse, 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

September 1, 2013

26-39

Notice of Continuation August 3, 2012

R432. Health, Family Health and Preparedness, Licensing.**R432-1. General Health Care Facility Rules.****R432-1-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-1-2. Purpose.

The purpose of this rule is to define the standard terms for all licensed health care facilities and agencies.

R432-1-3. Definitions.

(1) Terms used in this rule are defined in Section 26-21-2. In addition:

(2) "AWOL/Elopement" means absence without leave; an unauthorized departure from the facility.

(3) "Abortion" is defined in Section 76-7-301(1).

(4) "Abuse" is defined in 62A-3-301 as:

(a) attempting to cause, or intentionally or knowingly causing physical harm, or intentionally placing another in fear of imminent physical harm;

(b) physical injury caused by criminally negligent acts or omissions;

(c) unlawful detention or unreasonable confinement;

(d) gross lewdness;

(e) deprivation of life sustaining treatment, except:

(i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

(ii) when informed consent, as defined in Section 76-5-111, has been obtained.

(5) "Act" means the Health Facility Licensure and Inspection Act, Title 26, Chapter 21.

(6) "Active Treatment" means the rehabilitative program of care for ICF/MR patients described in 42 CFR Part 483 (1983) that addresses training in daily living, self-help, and social skills; activities; recreation; appropriate staffing level; special resident programs; program evaluation; nursing services; documented resident surveys and progress; and social services.

(7) "Activities of Daily Living" ("ADL") means those personal functional activities required for an individual for continued well-being; including eating/nutrition, mobility, dressing, bathing, toileting, and behavior management. ADLs are divided into the following levels:

(a) "Independent" means the resident can perform the ADL without help.

(b) "Assistance" means the resident can perform some part of an activity, but cannot do it entirely alone.

(c) "Dependent" means the resident cannot perform any part of an activity; it must be done entirely by someone else.

(8) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(9) "Affiliation" means a relationship, usually signified by a written agreement, between two organizations, under the terms of which one organization agrees to provide specified services and personnel to meet the needs of the other, usually on a scheduled basis.

(10) "Aftercare" means post-institution services designed to help a patient maintain or improve on the gains made during inpatient treatment.

(11) "Aide or Attendant" means a person employed to assist in activities of daily living and in the direct personal care of patients.

(12) "ADAAG" means the Americans with Disability Act Accessibility Guidelines, 28 CFR 36, Appendix A, July 1993.

(13) "Ambulatory" means a person who is capable of achieving mobility sufficient to exit his residence without assistance of another person.

(14) "Annual Report" means a document containing annual statistical information from a licensed health facility or

agency.

(15) "Assessment" means a process of observing, testing and evaluating a patient in order to obtain information.

(16) "Bathing Facility" means a bathtub or shower.

(17) "Bed Capacity" means the maximum number of beds which the facility is licensed to offer for patient care.

(18) "Behavior Management" means a planned, systematic application of methods and findings of behavioral science with the intent of reducing observable negative behaviors.

(19) "Birthing Room" means a room and environment designed, equipped and arranged to provide for the care of a woman and newborn and to accommodate her support person(s) during the process of vaginal birth.

(20) "Certificate of Completion" means a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma; to a person who passes a challenge exam for that same course of study; or to a person whose out-of-state credentials and certificate are acceptable to the Board.

(21) "Certified" means a health facility or agency which holds a current license issued by the Department, and which also meets the standards established for participation in federally funded programs, such as Medicare.

(22) "Certified Nurse Aide" means a nursing assistant who has completed a federally approved training program and proved competency through testing, thereby he is entitled to be employed in a licensed health care facility or agency.

(23) "Certified Registered Nurse Anesthetist" means a registered nurse who is licensed by the Utah Department of Commerce under Title 58 Chapter 31b.

(24) "Certified Nurse Midwife" means an individual licensed to practice by the Utah Department of Commerce under Title 58, Chapter 44a.

(25) "Certified Social Worker" means an individual licensed by the Utah Department of Commerce under Title 58, Chapter 60.

(26) "Chronic Noncompliance" means a violation of the same licensing administrative rule which is documented in any three inspections within a four year period. Inspections may include complaint investigations, surveys, or follow-up inspections on plans of correction, or any combination of these inspections that is documented by the Department, an accrediting organization or a federal agency.

(27) "Clinical Note" means a dated, written notation by a member of the health team which indicates contact with a patient and describes any of the following: signs and symptoms of dysfunction, treatment given or medication administered, the patient's reaction, changes in physical or emotional condition, or services provided.

(28) "Clinical Staff" means the physicians and certified providers appointed by the governing authority to practice within the health facility or agency.

(29) "Consultant" means an individual who provides professional services either upon request or on the basis of a prearranged schedule, usually on a contract basis, who is neither a member of the employed staff of the facility or agency, nor whose services are provided within the terms of an affiliation agreement.

(30) "Continuous Noncompliance" means three or more violations of a single licensing rule requirement occurring within a 12-month time period.

(31) "Contract Services" means services purchased by a health facility or agency under a contract with an individual or a provider whose personnel are not salaried employees of the facility or agency.

(32) "Control Station" means a central office or area for charting, drug preparation, and other patient-care tasks normally performed at a nursing station.

(33) "Critical Care Unit" means a special physical and functional unit for the segregation, concentration and close or continuous nursing observation and care of patients who are critically, seriously, or acutely ill.

(34) "Day Treatment" means training and habilitation services delivered outside the patient's place of residence which are intended to aid the vocational, pre-vocational, and self-sufficiency skill development of an ICF/MR patient. These services must meet active treatment requirements and must be coordinated and integrated with the active treatment program of the facility or agency.

(35) "Dentist" means a person registered and currently licensed by the Utah Department of Commerce under Title 58, Chapter 69.

(36) "Department" means the Utah Department of Health.

(37) "Developmental Disability" means a severe, chronic disability that meets all of the following conditions:

(a) Is attributable to: cerebral palsy, epilepsy, autism; or any other condition, other than mental illness, closely related to mental retardation which results in impairment of general intellectual functioning adaptive behavior, or requires treatment or services similar to those required for mentally retarded persons;

(b) Is manifested before the person reaches the age of 22;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three or more of the following areas of major activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; or

(vi) capacity for independent living.

(38) "Dietitian" means a person who is certified pursuant to Title 58, Chapter 49.

(39) "Direct Services" means services provided by salaried employees of a health facility or agency, as opposed to services provided by contract.

(40) "Direct Supervision" means the critical observation and guidance by a qualified person of another person's activities or course of action.

(41) "Discharge" means the point at which the patient's involvement with a facility or agency program is terminated and the facility or agency program no longer maintains active responsibility for the care of the patient.

(42) "Distinct Part" means a discrete, physically definable entity located within a structure constructed and equipped according to applicable codes which:

(a) provides within the structure the necessary unique physical facilities, equipment, staff, and supplies to deliver all basic services that are offered to and needed for the diagnosis, therapy, and treatment of patients, and to comply with licensing standards;

(b) provides or arranges for necessary administrative and non-unique, non-clinical, ancillary type services such as dietary, laundry, housekeeping, business office and medical records; and

(c) protects the rights of patients including freedom from unwanted intrusion by visitors, guests, staff, and residents of adjacent licensed facilities and use occupancies.

(43) "Documentation" means written supportive information, records, or references to verify information required by law or rule.

(44) "Drug History" means identifying all of the drugs used by a patient, including prescribed and unprescribed drugs.

(45) "Emergency" means any situation or event that threatens or poses a threat to the occupants of the facility or agency, or prohibits one or more occupants (staff, patient, or visitor) from receiving services normally offered by the facility or agency, or requires action not normally performed by the

facility or agency staff.

(46) "Emotional or psychological abuse" means deliberate conduct that is directed at a person through verbal or nonverbal means and that causes the individual to suffer emotional distress or to fear bodily injury, harm, or restraint.

(47) "Environment" means the physical and emotional atmosphere including architectural design, furnishings, color, privacy, and safety, as well as other people.

(48) "Executive Director" means the Executive Director of the Utah Department of Health.

(49) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.

(50) "Free-standing Urgent Care Center," as distinguished from a private physician's office or emergency room setting, means a facility which provides out-patient health care service (on an as-needed basis, without appointment) to the public for diagnosis and treatment of medical conditions which do not require hospitalization or emergency intervention for a life-threatening or potentially permanently disabling condition. Diagnostic and therapeutic services provided by a free-standing urgent care center include: a medical history physical examination, assessment of health status and treatment for a variety of medical conditions commonly offered in a physician's office.

(51) "Governing Authority or Governing Body" means the board of trustees, owner, person or persons designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the health care facility or agency.

(52) "Governmental Unit" means the state, or any county, municipality, or other political subdivision of any department, division, board or other agency of any of the foregoing.

(53) "Guardian" means a person legally responsible for the care and management of a person who is considered by law to be incompetent to manage his own affairs.

(54) "Habilitation" means techniques and treatment which actively build and develop new or alternative styles of independent functioning and promote new behavior which results in greater self-sufficiency and sense of well-being.

(55) "Health Care Facility or Agency" means any facility or agency licensed under the authority of the Health Facility Committee and designated as such in Subsection 26-21-2(10).

(56) "Health Services Supervisor" means a person with a professional medical license or certificate, such as a nurse, social worker, physical therapist, or psychologist, responsible for the development, supervision, and implementation of a written health care plan for each resident.

(57) "Homemaker" means a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(58) "Hospitalization" means an inpatient stay of at least 24 hours, or an overnight stay or emergency care, except a stay at a freestanding ambulatory surgical center that meets the requirements of R432-500.

(59) "ICD-9-CM" means the International Classification of Diseases, 9th revision, Clinical Modification, 1986.

(60) "Imminent Danger" means a situation or condition which presents a substantial likelihood of death or serious physical or mental harm to a patient or resident in the facility or agency.

(61) "Inpatient Program" means treatment provided in a suitably equipped setting that provides services to persons who require care that warrants 24-hour supervision.

(62) "Intake" means the administrative and assessment process for admission to a program.

(63) "Interdisciplinary Team" means a group of staff

members composed of representatives from different professions, disciplines, or services.

(64) "Involuntary Medication" means medication which is prescribed by the physician but not taken willingly by the patient, and is administered due to compelling medical reasons.

(65) "Joint Commission" means the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(66) "Lavatory" means a plumbing fixture designed and equipped for handwashing purposes.

(67) "License" means the certificate issued by the Department of Health for the operation of the facility or agency. This document constitutes the authority to receive patients and residents and to perform the services included within the scope of the rule and as specified on the license.

(68) "Licensed Practical Nurse (LPN)" means a person registered and licensed by the Utah Department of Commerce under Title 58, Chapter 31b.

(69) "Licensed Practitioner" means a health professional whose license allows diagnosis, treatment, and prescribing practices within the scope of the license and established protocols.

(70) "Licensee" means the person or organization who is granted a license to operate a health facility or agency and who has ultimate authority and responsibility for the operation, management, control, conduct, and functioning of the facility or agency.

(71) "Licensing Agency" means the Bureau of Licensing of the Utah Department of Health.

(72) "Licensure" means the process of obtaining official or legal permission to operate a health facility or agency.

(73) "Living Unit" means the area or part of a facility where residents sleep and may include dining and other resident activity areas.

(74) "Low Risk Maternal Mother" means a woman who is in good general health throughout pregnancy and birth and who meets the criteria for low risk birth services as developed by the clinical staff and approved by the governing board and licensing agency for a Birthing Center.

(75) "Maladaptive (negative) Behavior" means behavior that is either self-injurious, or dangerous to others, or environmentally destructive, demonstrating a reduction in or lack of ability necessary to adjust to environmental demands.

(76) "Medical Equipment and Supplies" means items used for therapeutic or diagnostic purposes essential for patient care, such as dressings, catheters, or syringes.

(77) "Medical Staff" means, the organized body composed of all specified professional personnel, appointed by the governing body and granted privileges to practice in the facility or agency.

(78) "Medication" means any drug, chemical compound, suspension, or preparation suitable for internal or external use by persons for the treatment or prevention of disease or injury.

(79) "Mental Retardation" means significantly subaverage general intellectual functioning resulting in, or associated with, concurrent impairments in adaptive behavior and manifested during the developmental period. Significantly subaverage general intellectual functioning is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test. Developmental period is defined as the period between conception and the 18th birthday.

(80) "Mental Disease" means any disease listed as a mental disorder in the ICD-9-CM excluding the codes for senility or organic brain syndrome (290 through 294.9 and 310 through 310.9), the codes for adjustment reaction (309); the codes for psychic factors associated with diseases classified elsewhere (316); and the codes for mental retardation (317 through 319). Codes 314 through 315.9 may also be excluded for individuals suffering impairment of general intellectual functioning or adaptive behavior similar to that of mentally

retarded persons. Codes 309 and 316 are also excluded.

(81) "Mobile" means a person who is able to take action for self-preservation under emergency conditions with the assistance of supportive equipment such as crutches, braces, walkers, or wheelchairs, but without the assistance, except for verbal instructions, from other persons.

(82) "Neglect" means the same as 62A-3-301(10).

(83) "New Construction" means any of the following:

(a) New medical or health care facilities licensed under these rules;

(b) Addition(s) to an existing building;

(c) Alteration(s) or modification(s) (other than strictly repair and maintenance) costing more than \$3,000 or that affect the structure, electrical or mechanical system of a health care facility.

(84) "Non-Ambulatory" means unable to walk without assistance of other persons.

(85) "Nursing Care" means assistance provided to sick or disabled individuals, by or under the direction of licensed nursing personnel, for their health care needs.

(86) "Nursing Home" means any facility licensed by the Department as a nursing care facility that provides licensed nursing care and related services to residents who need continuous health care and supervision.

(87) "Occupational Therapist" means a person currently licensed by the Utah Department of Commerce under Title 58, Chapter 42a.

(88) "Oral Surgeon" means a person who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accrediting body approved by the U.S. Office of Education and is licensed by the Utah Department of Commerce to practice dentistry.

(89) "PRN medication" means medication which is administered pro re nata. Pro re nata means as needed. The time of medication administration is determined by the resident's need.

(90) "Parent Facility" means all free-standing health facilities under a single ownership licensed under Section 26-21-2 except home health agencies. The parent facility includes:

(a) the main structure, wings, or detached buildings where a service within the scope of the facility's license is offered and any detached building used for storage, heating or cooling equipment located on the main grounds bounded by a city, county or a state street or road, or a property line; and

(b) any structure located outside the main facility grounds connected to the main facility by a heating or cooling system or by a covered walkway where a service is provided within the scope of the parent facility's license.

(91) "Patient" means a resident or person receiving care in a health care facility or agency. Patient, client or resident terms are interchangeable meaning a person who is receiving needed services.

(92) "Patient Care Plan" means an integrated plan of care developed for the patient.

(93) "Pediatric Patients" means infants, children, adolescents, and young adults up to the age of 18.

(94) "Personal Care" means assistance provided to residents in activities of daily living.

(95) "Personal Care Aide" means a person who assists patients or residents in the activities of daily living and emergency first aid; and who may be supervised by a licensed nurse.

(96) "Personal Resource Funds" means monies received by a patient from a variety of sources which the patient may spend as needed or desired.

(97) "Personnel" means individual(s) in training or employed by the health care facility or agency.

(98) "Pharmacist" means a person currently licensed by the Utah Department of Commerce to practice pharmacology

pursuant to Title 58, Chapter 17a.

(99) "Physical Therapist" means a person currently licensed by the Utah Department of Commerce to practice under Title 58, Chapter 24a.

(100) "Physician" means a person who is licensed to practice medicine and surgery by the Utah Department of Commerce under Section 58-67-301, the Utah Medical Practice Act, or Section 58-68-301, Utah Osteopathic Medical Practice Act, or a physician in the employment of the government of the United States who is similarly qualified.

(101) "Place of Residence" means the place a patient makes his home. This may be a house, an apartment, a relative's home, housing for the elderly, a retirement home, an assisted living facility, or a place other than a health care facility which provides continuous nursing care.

(102) "Plan of Care or Plan of Treatment" are interchangeable terms which mean a written plan based on assessment data or physician orders that identifies the patient's needs, who shall provide needed services and how often, treatment goals, and anticipated outcomes.

(103) "Podiatrist" means a person registered and licensed by the Utah Department of Commerce under Title 58, Chapter 5a.

(104) "Policies and Procedures" means a set of rules adopted by the governing body to govern the health care facility or agency's operation.

(105) "Practitioner" means a registered nurse, with advanced or specialized training, who is licensed by Utah Department of Commerce, Title 58, Chapter 31b.

(106) "Prognosis" means a statement given as:

- (a) the likelihood of an individual achieving stated goals;
- (b) the degree of independence likely to be achieved; or
- (c) the length of time to achieve goals.

(107) "Program" means a general term for an organized system of services designed to address the treatment needs of the patient.

(108) "Protected Living Arrangement" means provision for food, shelter, sleeping accommodations, and supervision of activities of daily living for persons of any age who are unable to independently maintain these basic needs and functions.

(109) "Provider" means a supplier of goods or services.

(110) "Public Agency" means an agency operated by a state or local government.

(111) "Public Health Center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(112) "Qualified Mental Retardation Professional (QMRP)" means a person who has specialized training or one year of experience in treating or working with the mentally retarded including any one of the following: psychologist with a master's degree from an accredited program; licensed physician; educator with a bachelor's degree in education from an accredited program; social worker with a bachelor's degree in social work from an accredited program or a field other than social work and at least three years of social work experience under the supervision of a qualified social worker; licensed physical or occupational therapist; licensed speech pathologist or audiologist; registered nurse; therapeutic recreation specialist who is a graduate of an accredited program and is licensed to perform recreational therapy under the provisions of Title 58, Chapter 40; Rehabilitation counselor who is certified by the Committee on Rehabilitation Counselor Certification.

(113) "Quality of Care" means the provision of patient treatment, including medical or nursing care as well as restorative therapies.

(114) "Quality of Life" means how a patient experiences the state of existing and functioning in the facility environment, and is related to the human and humane processes involved in

normal human functioning, including rights and freedoms.

(115) "Recovery," for birthing centers, means that period or duration of time starting at birth and ending with the discharge of a client from the birthing center, or the period of time between the birth and the time a mother leaves the premises of the birthing center.

(116) "Recreational Therapist" means any person licensed to perform recreational therapy under the provisions of Title 58, Chapter 40.

(117) "Referred Outpatient" means a person who is receiving his medical diagnosis, treatment, or other health care services from one or more sources outside the hospital, but who receives from the hospital diagnostic tests or examinations ordered by health care practitioners, legally permitted to order such tests and examinations, and to whom the hospital reports findings and results.

(118) "Refurbish" means to clean or otherwise change the appearance without making significant changes in the existing physical structure of a facility.

(119) "Registered Nurse" means any person who is registered and licensed by the Utah Department of Commerce to practice as a registered nurse under Title 58, Chapter 31.

(120) "Rehabilitation" means a program of care designed to restore a patient to a former capacity.

(121) "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even if the marriage has been terminated by death or dissolution.

(122) "Remodel" means to reconstruct or to make significant changes in the existing physical structure of a facility.

(123) "Representative" means a person employed by the Department.

(124) "Request for Hearing" means any clear expression in writing by a provider requesting an opportunity to appeal a Department action following R432-30.

(125) "Resident Living" means residential services provided by an ICF/MR facility.

(126) "Responsible Person" means an individual, relative, or close friend designated in writing by the resident, or a court-appointed guardian or person with durable power of attorney, who assists the resident and assumes responsibility for the resident's well-being and for any care not provided by the facility or agency.

(127) "Restrictive Procedures" means a class of procedures designed to reduce or eliminate maladaptive behaviors including:

- (a) restricting an individual's movement;
- (b) restricting an individual's ability to obtain positive reinforcement; and
- (c) restricting an individual's ability to participate in programs.

(128) "Safety Device" means a protective device used to offer protection from inadvertent acts (such as falling out of bed) as well as deliberate acts (such as removing a nasogastric tube).

(129) "Seclusion" means a procedure that isolates the patient in a specific room or designated area to temporarily remove the patient from the therapeutic community and reduce external stimuli.

(130) "Self Administration of Medication" means the act by which a resident independently removes an individual dose from a properly labeled container and takes that medication. The resident must know the medication type, dosage and frequency of administration.

(131) "Service Delivery Area" means any area in the facility where a specific service or group of services is

organized, performed or carried out. For example the dietary services area includes the kitchen; patient care services delivery area includes patient rooms, corridors, and adjacent areas.

(132) "Service Pattern" means a continuum of medical and psychological needs expressed as a type and used in evaluation for appropriate placement and treatment purposes.

(133) "Social Service Worker (SSW)" means a person currently licensed by the Utah Department of Commerce to function as a social service worker under Title 58, Chapter 60.

(134) "Social Worker, Certified (CSW)" means a person currently licensed by the Utah Department of Commerce to practice social work under Title 58, Chapter 60.

(135) "Specialty Hospital" means a hospital which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.

(136) "Speech-Language Pathologist" means a person licensed by the Utah Department of Commerce to practice speech-language pathology pursuant to Title 58, Chapter 41.

(137) "Substantial Noncompliance" means any occurrence of a Class I violation, or the occurrence of one or more Class II violations resulting in continuous noncompliance, or chronic noncompliance with one or more rule requirements in the administrative rules specific to the health care facility licensure category.

(138) "Summary Report" means a compilation of pertinent facts from the clinical notes regarding a patient, usually submitted to the patient's physician as part of a plan of treatment.

(139) "Supervision" means guidance of another person or persons by a qualified person to assure that a service, function, or activity is provided within the scope of a license, certificate, job description, or instructions.

(140) "Support Person" means the individual(s) selected or chosen by a mother to provide emotional support and to assist her during the process of labor and childbirth.

(141) "Surgeon General" means the surgeon general of the United States public health service.

(142) "Therapist" means a professionally trained licensed or registered person (such as a physical therapist, occupational therapist, or speech therapist), who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(143) "Training and Habilitation Services" means services intended to improve or aid the intellectual, sensorimotor, and emotional development of a patient or resident.

R432-1-4. Identification Badges.

(1) Health care facilities and agencies shall ensure that the following persons, shall wear an identification badge:

(a) professional and non-professional employees who provide direct care to patients; and

(b) volunteers.

(2) The identification badge shall include the following:

(a) the person's first or last name; however, the badge does not have to reveal the person's full name; and

(b) the person's title or position, in terms generally understood by the public.

KEY: health care facilities

August 7, 2001

Notice of Continuation August 12, 2013

26-21-2

R432. Health, Family Health and Preparedness, Licensing.**R432-2. General Licensing Provisions.****R432-2-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

R432-2-3. Exempt Facilities.

The provisions of Section 26-21-7 apply for exempt facilities.

R432-2-4. Distinct Part.

Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensing rule, with the exception of federally recognized Swing Bed Units, shall submit for Department review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

R432-2-5. Requirements for a Satellite Service Operation.

(1) A "satellite operation" is a health care treatment service that:

- (a) is administered by a parent facility within the scope of the parent facility's current license,
- (b) is in a location not contiguous with the parent facility,
- (c) does not qualify for licensing under Section 26-21-2, and
- (d) is approved by the Department for inclusion under the parent facility's license and identified as a remote service.

(2) A licensed health care facility that wishes to offer a satellite operation shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:

- (a) location of the remote facility (street address);
- (b) capacity of the remote facility;
- (c) license category of the parent facility;
- (d) service to be provided at the remote facility (must be a service authorized under the parent facility license);
- (e) ancillary administrative and support services to be provided at the remote facility; and
- (f) Uniform Building Code occupancy classification of the remote facility physical structure.

(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

- (a) There is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;
- (b) The remote facility physical structure complies with all construction codes appropriate for the service provided;
- (c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a facility qualifies as a single satellite service treatment center the Department shall issue a separate license identifying the facility as a "satellite service" of the licensed

parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain a license for the remote complex as a free-standing health care facility.

(6) A satellite facility is not permitted within the confines of another licensed health care facility.

R432-2-6. Application.

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

- (a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;
- (b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and
- (c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

- (a) None of the persons has been convicted of a felony;
- (b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

- (i) subject of a patient care receivership action;
- (ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;
- (iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or
- (iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

(6) The licensee may apply to designate any number of beds within the facility's licensed capacity as banked beds on a form provided by the Department.

(a) The licensee may apply to designate beds as banked no later than December 1st of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as

having an operational bed capacity equal to the licensed capacity minus any beds banked by the facility.

(c) Banking beds shall not alter the licensed capacity of a facility.

(7) The licensee may apply to return any number of banked beds to operational bed capacity on a form provided by the Department.

(a) The licensee may apply to return banked beds to operational capacity no later than December 1 of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds still banked by the facility.

(c) Beds previously banked that have been returned to operational capacity must meet the construction and life safety codes that were applicable to the facility at the time the beds were last banked.

(8) The requirements contained in Utah Code Section 26-21-23(5)(a) shall be met if a nursing care facility filed a notice of intent or application with the Department and paid a fee relating to a proposed nursing care facility prior to March 1, 2007.

(9) The requirements contained in Utah Code Section 26-21-23(5)(b) shall be met if a nursing care facility complies with the requirements of R432-4-14(4) and R432-4-16 on or before July 1, 2008.

R432-2-7. License Fee.

In accordance with Subsection 26-21-5(1)(c), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

R432-2-8. Additional Information.

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

(1) architectural plans and a description of the functional program.

(2) policies and procedures manuals.

(3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) data reports including the submission of the annual report at the Departments request.

(5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

R432-2-9. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-6.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted

from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-10. License Contents and Provisions.

(1) The license shall document the following:

(a) the name of the health facility,

(b) licensee,

(c) type of facility,

(d) approved licensed capacity including identification of operational and banked beds,

(e) street address of the facility,

(f) issue and expiration date of license,

(g) variance information, and

(h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.

(4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

R432-2-11. Expiration and Renewal.

(1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under subsection (2) or (4) by the Department.

(2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.

(3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-8) 15 days before the current license expires.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.

(5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

R432-2-12. New License Required.

(1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

(a) occupancy of a new or replacement facility.

(b) change of ownership.

(2) Before the Department may issue a new license, the prospective licensee shall provide documentation that:

(a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.

(b) the existing policy and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.

(c) new contracts for professional or other services not provided directly by the facility have been secured.

(d) new transfer agreements have been drafted and signed.

(e) written documentation exists of clear ownership or lease of the facility by the new owner.

(3) Upon sale or other transfer of ownership, the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all

patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owners receipt of the license.

(6) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

R432-2-13. Change in Licensing Status.

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

- (a) increase or decrease of licensed capacity.
- (b) change in name of facility.
- (c) change in license category.
- (d) change of license classification.
- (e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

R432-2-14. Facility Ceases Operation.

(1) A licensee that voluntarily ceases operation shall complete the following:

- (a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.
- (b) make provision for the safe keeping of records.
- (c) return all patients' monies and valuables at the time of discharge.
- (d) The licensee must return the license to the Department within five days after the facility ceases operation.

(2) If the Department revokes a facility's license or if it issues an emergency closure order, the licensee shall document for Department review the following:

- (a) the location and date of discharge for all residents,
- (b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and
- (c) the date and time that the facility complied with the closure order.

R432-2-15. Provisional License.

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(a) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.

(b) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months. It may issue no more than one provisional license to any health facility in any 12-month period.

(2) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-16. Conditional License.

(1) A conditional license is a remedial license issued to a licensee if there is a determination of substandard quality of care, immediate jeopardy or a pattern of violations which would result in a ban on admissions at the facility or if the licensee is found to have:

- (a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;
- (b) more than three cited repeat Class I or II violations from the previous year; or
- (c) fails to fully comply with administrative requirements for licensing.

(2) A standard license is revoked by the issuance of a conditional license.

(3) The Department may not issue a conditional license after the expiration of a provisional license.

(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.

(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-17. Standard License.

A standard license is a license issued to a licensee if:

- (1) the licensee meets the conditions attached to a provisional or conditional license;
- (2) the licensee corrects the identified rule violations; or
- (3) when the facility assures the Department that it complies with R432-2-11 to R432-2-12.

R432-2-18. Variances.

(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the

variance is not justified.

- (4) The Department may revoke a variance if:
 - (a) The variance adversely affects the health, safety, or welfare of the residents.
 - (b) The facility fails to comply with the conditions of the variance as granted.
 - (c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.
 - (d) There is a change in the statute, regulations or rules.

R432-2-19. Change In Ownership.

- (1) As used in this section, an "owner" is any person or entity:
 - (a) ultimately responsible for operating a health care facility; or
 - (b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.
- (2) The owner of the health care facility does not need to own the real property or building where the facility operates.
- (3) A property owner is also an owner of the facility if he:
 - (a) retains the right or participates in the operation or business decisions of the enterprise;
 - (b) has engaged the services of a management company to operate the facility; or
 - (c) takes over the operation of the facility.
- (4) A licensed provider whose ownership or controlling ownership interest has changed must submit a Request for Agency Action/License Application and fees to the department 30 days prior to the proposed change
- (5) Changes in ownership that require action under subsection (4) include any arrangement that:
 - (a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;
 - (b) removes, adds, or substitutes an owner or part owner; or
 - (c) in the case of an incorporated owner:
 - (i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20 percent or more from the board of the original licensee; or
 - (ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20 percent or more from the board of the original licensee.
- (6) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.
- (7) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

KEY: health care facilities

January 27, 2010

Notice of Continuation August 12, 2013

26-21-9

26-21-11

26-21-12

26-21-13

R432. Health, Family Health and Preparedness, Licensing.
R432-3. General Health Care Facility Rules Inspection and Enforcement.

R432-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and the licensing agency in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities and agencies regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by The Joint Commission (TJC), Accreditation Association for Ambulatory Health Care (AAAHC), Accreditation Commission for Health Care, Community Health Accreditation Program or the American Osteopathic Association's Health Facilities Accreditation Program (AOA/HFAP) in lieu of the licensing inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

- (a) initiate deemed status,
- (b) continue deemed status, or
- (c) relinquish deemed status during the licensing year of application.

(2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

- (a) accreditation certificate;
- (b) Joint Commission Statement of Construction;
- (c) survey reports and recommendations;
- (d) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

- (a) inspections,
- (b) complaint investigations,
- (c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including:

(i) facilities or agencies granted a provisional or conditional accreditation by the Joint Commission until a full accreditation status is achieved,

(ii) any facility or agency that does not have a current, valid accreditation certificate, or

(iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular inspections shall apply.

R432-3-4. Statement of Findings.

(1) The Department or its designee may inspect each facility or agency at least once during each year that a license

has been granted, to determine compliance with standards and the applicable rules and regulations.

(2) Whenever the Department has reason to believe that a health facility or agency is in violation of Title 26, Chapter 21 or any of the rules promulgated by the Health Facility Committee, the Department shall serve a written Statement of Findings to the licensee or his designee within the following timeframe.

(a) Statements for Class I and III violations are served immediately.

(b) Statements for Class II violations are served within ten working days.

(3) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(c) "Class III Violation" means establishing, conducting, managing, or operating a health care facility or agency regulated under Title 26, Chapter 21 and this rule without a license or with an expired license.

(4) The Department may cite a facility or agency with one or more rule or statute violations. If the Department finds that there are no violations, a letter shall be sent to the facility acknowledging the inspection findings.

(5) The Statement of Findings shall include:

- (a) the statute or rule violated;
- (b) a description of the violation;
- (c) the facts which constitute the violation; and
- (d) the classification of the violation.

R432-3-5. Plan of Correction.

(1) A health facility or agency shall submit within 14 calendar days of receipt of a Statement of Findings a Plan of Correction outlining the following:

- (a) how the required corrections shall be accomplished;
- (b) who is the responsible person to monitor the correction is accomplished; and
- (c) the date the facility or agency will correct the violation.

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the Plan of Correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility or agency of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. If the Department requests a revised Plan of Correction, the facility or agency shall submit the revised Plan of Correction within 14 days of receipt of the Department request.

(4) If the facility or agency corrects the violation prior to submitting the Plan of Correction, the facility or agency shall submit a report of correction.

(5) If violations remain uncorrected after the time specified for completion in the Plan of Correction or if the facility or agency fails to submit a Plan of Correction as specified, the Department shall notify the facility or agency.

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions outlined in Rule R432-30, Adjudicative Proceedings.

(7) If a licensed or unlicensed health facility or agency is

served with a Statement of Findings citing a Class I violation, the facility or agency shall correct the situation, condition, or practice constituting the Class I violation immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(a) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed-upon correction period to determine correction of Class I violations.

(b) If a health facility or agency fails to correct a Class I violation as outlined in the accepted Plan of Correction, the Department shall pursue sanctions or penalties through a formal adjudicative proceeding as outlined in Rule R432-30.

(8) A facility or agency served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time-frame approved by the Department which does not exceed 60 days unless justification is provided in the accepted Plan of Correction.

(9) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility or agency if a facility or agency is cited with a Class II violation and fails to take required corrective action as outlined in Rule R432-30.

(10) The Department shall determine which sanction to impose by considering the following:

- (a) the gravity of the violation;
- (b) the effort exhibited by the licensee to correct violations;
- (c) previous facility or agency violations; and
- (d) other relevant facts.

(11) The Department shall serve a facility or agency with a Statement of Findings for a Class III violation. A facility of agency cited for a Class III violation must file a Request for Agency Action/License Application form and pay the required licensing fee within 14 days of the receipt of the Class III Statement of Findings.

(a) The Statement of Findings may include the names of individuals residing in the facility who require services outside the scope of the proposed licensing category.

(b) The facility shall arrange for all individuals to be relocated if the facility is unable to meet the individuals' needs within the scope of the proposed license category.

(c) If the facility or facility fails to submit the Request for Agency Action/License Application as specified, the Department shall issue a written Notice of Agency Action ordering closure of the facility or agency.

(d) If the Executive Director determines that the lives, health, safety or welfare of the patients or residents cannot be adequately assured pending a full formal adjudicative proceeding, he may order immediate closure of the facility or agency under an emergency adjudicative proceeding, as outlined in Rule R432-30.

R432-3-6. Sanction Action on License.

(1) The Department may initiate an action against a health facility or agency pursuant to Section 26-21-11. That action may include the following sanctions:

(a) denial or revocation of a license if the facility or agency fails to comply with the rules established by the Committee, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state;

(b) restriction or prohibition on admissions to a health facility or agency for:

- (i) any Class I deficiency,
- (ii) Class II deficiencies that indicate a pattern of care and have resulted in the substandard quality of care of patients,
- (iii) repeat Class I or II deficiencies that demonstrate continuous noncompliance or chronic noncompliance with the rules, or

(iv) permitting, aiding, or abetting the commission of any illegal act in the facility or agency;

(c) distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensing rules or illegal conduct permitted by the facility or agency and the Department action taken;

(d) placement of Department employees or Department-approved individuals as monitors in the facility or agency until such time as corrective action is completed or the facility or agency is closed;

(e) assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility or agency;

(f) during the correction period, placement of a temporary manager to ensure the health and safety of the patients; or

(g) issuance of a civil money penalty pursuant to UCA 26-23-6, not to exceed the sum of \$10,000 per violation.

(2) If the Department imposes a restriction or prohibition on admissions to a long-term care facility or agency, the Department shall send a written notice to the licensee.

(a) The licensee shall post the copies of the notice on all public entry doors to the licensed long-term care facility or agency.

(b) The Department shall impose the restriction or prohibition if:

(i) the long-term care facility or agency has previously received a restriction or prohibition on admissions within the previous 24 month period; or

(ii) the long-term care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

(iii) circumstances in the facility or agency indicate actual harm, a pattern of harm, or a serious and immediate threat to patients.

(3) If telephone inquiries are made to a long-term care facility or agency with a restriction or prohibition on admissions, the facility or agency shall inform the caller, during the call, about the restriction or prohibition on admissions. If the facility or agency fails to inform the caller, the department may assess penalties as allowed by statute and shall require the facility or agency to post a written notice on all public entry doors.

R432-3-7. Immediate Closure of Facility.

(1) The Department may order the immediate closure of any licensed or unlicensed health facility or agency when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in section 63-46b-20 shall be followed.

(3) If the Department determines to close a facility or agency, it shall serve an order that the facility or agency is ordered closed as of a given date. The order shall:

- (a) state the reasons the facility is ordered closed;
- (b) cite the statute or rule violated; and
- (c) advise as to the commencement of a formal adjudicative proceeding in accordance with this rule.

(4) The Department may maintain an action in the name of the state for injunction or other process against the health facility or agency which disobeys a closure order as provided in section 26-21-15.

(5) The Department may assist in relocating patients or residents to another licensed facility or agency.

(6) The Department may pursue other lesser sanctions in lieu of the closure order.

(7) The Department may, in addition to emergency closure, seek criminal penalties.

R432-3-8. Mandatory License Revocation.

(1) The Department may revoke a license or refuse to renew a license for a health care facility that is in chronic noncompliance with one or more of the rule requirements identified as mandatory license revocation criteria in the rules specific to the facility or agency licensing category.

(2) The Department may not revoke a license or refuse to renew a license for chronic noncompliance on the third or subsequent violation unless it has documented within 14 working days from receipt of the Statement of Findings two prior violations and given the licensee or facility administrator a written warning notice. The written notice shall include a statement that continued violation could result in revocation of the license.

(3) If the Department revokes the license because of chronic noncompliance and the evidence supports the Department's finding of chronic noncompliance, no lesser sanction may be substituted, either by the Department or upon subsequent review by the Health Facility Committee or the courts.

KEY: health care facilities

April 24, 2013

Notice of Continuation August 12, 2013

26-21-5

26-21-14

through

26-21-16

R432. Health, Family Health and Preparedness, Licensing.**R432-4. General Construction.****R432-4-1. Legal Authority.**

This rule is adopted pursuant to Title 26 Chapter 21 for General Hospitals; Specialty Hospitals; Ambulatory Surgical Facilities; Nursing Care Facilities; Inpatient Hospices; Birthing Centers; Abortion Clinics; End Stage Renal Disease Facilities; and Small Health Care Facilities.

R432-4-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving services by establishing construction standards.

R432-4-3. General Design.

(1) The licensee is responsible for assuring compliance with this section.

(2) When testing and certification compliance can only be verified through written documentation, the licensee must maintain documentation in the facility for Department review.

(3) Additional requirements for individual health care facility categories are included in the individual category construction rules sections of the Health Facility Licensure Rules, R432. If conflicts exist between R432-4 and individual category rules, the individual category rules govern.

(4) If conflicts exist between applicable codes, the most restrictive code applies.

(5) When other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the more restrictive requirements apply.

(6) The licensee shall ensure the building complies with the functional requirements for the applicable licensure classification and shall ensure provisions are made for all facilities and equipment necessary to meet the care and safety needs of all clients served, when construction is completed.

(7) When the terms "room" or "office" are used in this rule it describes a specific, separate, enclosed space for a service. When the term "area" is used, multiple services may be accommodated in one enclosed space.

R432-4-4. Site Location.

(1) The site of the licensed health care facility shall be accessible to both community and service vehicles, including fire protection apparatus.

(2) Facilities shall ensure that public utilities are available.

R432-4-5. Site Design.

(1) Paved roads shall be provided within the property for access to all entrances, service docks and for fire equipment access to all exterior walls.

(2) Paved walkways shall be provided for pedestrian traffic.

(3) Paved walkways shall be provided from every required exit to a dedicated public way.

(4) Hospitals with an organized emergency service shall have well marked emergency access to facilitate entry from public roads or streets serving the site. Vehicular or pedestrian traffic shall not conflict with access to the emergency service area. The emergency entrance shall be covered to ensure protection for patients during transfer from automobile or ambulance.

R432-4-6. Parking.

(1) Parking shall be provided in accordance with local zoning ordinances.

(2) The requirements of the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines, (ADA/ABA-AG) for handicapped parking access shall apply and parking spaces for the disabled shall be directly accessible

to the facility without the need to go behind parked cars or cross vehicle traffic lanes.

R432-4-7. Environmental Pollution Control.

Public Law 91-190, National Environment Policy Act, requires the site and project be developed to minimize any adverse environmental effects on the neighborhood and community. Environmental clearances and permits shall be obtained from local jurisdictions and the Utah Department of Environmental Quality.

R432-4-8. Standards Compliance.

(1) The following standards are adopted by reference:

(a) Illuminating Engineering Society of North America, IESNA, publication RP-29-06, Lighting for Hospitals and Health Care Facilities, 2006 edition;

(b) The following chapters of the National Fire Protection Association Life Safety Code, NFPA 101, as adopted by the Legislature in Title 15A-5-207, The State Construction and Fire Codes Act:

(i) Chapter 18, New Health Care Occupancies;

(ii) Chapter 20, New Ambulatory Health Care Occupancies.

(c) Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA/ABA-AG).

(2) The following codes and standards apply to health care facilities. The licensee shall obtain clearance from the authority having jurisdiction and submit documentation to the Department verifying compliance with these codes and standards as they apply to the category of health care facility being constructed:

(a) Local zoning ordinances;

(b) International Building Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(c) International Mechanical Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(d) International Plumbing Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(e) International Fire Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(f) R313. Environmental Quality, Radiation Control;

(g) R309. Environmental Quality, Drinking Water and Sanitation;

(h) R315. Environmental Quality, Solid and Hazardous Waste;

(i) NFPA 70, National Electric Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(j) NFPA 99, Standards for Health Care Facilities, 2005 edition;

(k) NFPA 110, Emergency and Standby Power Systems, 2010 edition;

(l) American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), Handbook of Fundamentals, 2009 edition.

(3) The licensee shall obtain a Certificate of Occupancy from the local building official having jurisdiction.

(4) The licensee shall obtain a Certificate of Fire Clearance from the Fire Marshal having jurisdiction.

(5) The licensee must obtain clearance from the Department prior to utilization of newly constructed facilities and additions or remodels of existing facilities.

R432-4-9. New Construction, Additions and Remodeling.

(1) New construction, additions and remodels to existing structures, shall comply with Department rules in effect on the

date the schematic drawings are submitted to the Department.

(2) If the remodeled area or addition in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with adopted codes and rules governing new construction which are in effect on the date the schematic drawings are submitted to the Department.

(3) During remodeling and new construction, the licensee must maintain the safety level which existed prior to the start of work.

R432-4-10. Existing Building Licensure.

(1) Existing buildings, currently licensed, shall conform to Department construction rules in effect at the time of original facility licensure.

(2) Existing buildings which are currently licensed, or which were previously licensed, but are changing classification; or for which the licensed has lapsed, shall comply with requirements for new construction.

R432-4-11. Building Refurbishing.

(1) Paint, carpet, wall coverings, and other new materials installed as part of a refurbishing project shall comply with R432-4-8.

(2) The licensee shall maintain documentation of compliance with codes, rules, and standards.

R432-4-12. Mixed Occupancies.

(1) Health care occupancies must be separated from non-health care occupancies in accordance with requirements of the local jurisdiction and NFPA 101.

(2) If separation of occupancies is not practical, the most restrictive occupancy requirements apply to the building.

R432-4-13. Campus and Contract Facilities.

All housing, treatment, and diagnostic areas and facilities utilized by a patient admitted to a licensed health care facility shall be constructed in accordance with the requirements of R432-4 if:

(1) the area will be used by one or more patients who are physically or mentally incapable of taking independent life saving action in an emergency;

(2) the prescribed or administered treatment renders the patient incapable of taking independent life saving action in an emergency; or

(3) the patient is incapable of taking independent life saving action in an emergency due to physical or chemical restraints.

R432-4-14. Plan Review.

(1) Prior to submitting documents for plans review, the facility licensee or designee shall schedule a conference with Department representatives, the licensee's architect, and the licensee or his designee to outline the required plans review process.

(2) The licensee shall submit the following for Department review:

- (a) a functional program,
- (b) schematic drawings,
- (c) design development drawings,
- (d) working drawings,
- (e) specifications.

(3) The Department may initiate review when all required documents and fees are received.

(4) Working drawings and specifications for new construction, additions, or remodeling must have the seal of a Utah licensed architect affixed, in compliance with Section 58-3a-602.

(5) The licensee shall pay a plans review and construction inspection fee assessed by the Department in accordance with the fee schedule approved by the Legislature.

(6) Plans approval by the Department shall not relieve the licensee of responsibility for full compliance with R432-4.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or the latest plan review response letter, if construction has not commenced.

(8) After a 12 month lapse, the licensee must resubmit plans and a new plan review fee to the Department and obtain a new letter of approval before work proceeds.

(9) The Department may issue a license or modify a license only after the Department has determined the facility complies with adopted construction rules and has obtained all clearances and certifications.

R432-4-15. Functional Program.

The functional program required in R432-4-14(2)(a) must include the following:

(1) the purpose and proposed license category of the facility;

(2) services offered, including a detailed description of each service;

(3) ancillary services required to support each function or program;

(4) departmental relationships;

(5) services offered under contract by outside providers and the required in-house facilities to support these services;

(6) services shared with other licensure categories or functions;

(7) a description of anticipated in-patient workloads;

(8) a description of anticipated out-patient workloads;

(9) physical and mental condition of intended patients;

(10) patient age range;

(11) ambulatory condition of intended patients, such as non-ambulatory, mobile, or ambulatory;

(12) type and use of general or local anesthetics;

(13) use of physical or chemical restraints;

(14) special requirements which could affect the building;

(15) area requirements for each service offered, stated in net square feet;

(16) seclusion treatment rooms, if provided, including staff monitoring procedures;

(17) exhaust systems, medical gases, laboratory hoods, filters on air conditioning systems, and other special mechanical requirements;

(18) special electrical requirements;

(19) x-ray facilities, nurse call systems, communication systems, and other special systems;

(20) a list of specialized equipment which could require special dedicated services or special structures.

(21) a description of how essential core services will accommodate increased demand, if a building is designed for expansion;

(22) inpatient services, treatment areas, or diagnostic facilities planned or anticipated to be housed in other buildings, the construction type of the other buildings, and provisions for protecting the patient during transport between buildings.

(23) infection control risk assessment to determine the need for the number and types of isolation rooms over and above the minimum numbers required by the Guidelines.

R432-4-16. Drawings.

Drawings must show all equipment necessary for the operation of the facility.

(1) Schematic drawings may be single line and shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the

building for public, emergency, and service vehicles;

- (c) site drainage;
- (d) any unusual site conditions, including easements which might affect the building or its appurtenances;
- (e) relationships of departments to each other, to support facilities, and to common facilities;
- (f) relationships of rooms and areas within departments;
- (g) number of inpatient beds;
- (h) total building area or area of additions or remodeled portions.

(2) Design development drawings, drawn to scale, shall contain the following information:

- (a) room sizes;
- (b) type of construction, using International Building Code classifications;
- (c) site plan, showing relationship to streets and vehicle access;
- (d) outline specification;
- (e) location of fire walls, corridor protection, fire hydrants, and other fire protection equipment;
- (f) location and size of all public utilities;
- (g) types of mechanical, electrical and auxiliary systems; and
- (h) provisions for the installation of equipment which requires dedicated building services, special structure or which require a major function of space.

(3) Working drawings shall include all previous submitted drawings and specifications.

(a) The licensee shall provide one copy of completed working drawings and specifications to the Department.

(b) Within 30 days after receipt of the required documentation and plan review fee, the Department will provide to the licensee and the project architect a written report of modifications required to comply with construction standards.

(c) The licensee shall submit the revised plans for review and final Department approval.

R432-4-17. Construction Inspections.

(1) The Department may conduct interim inspections during construction.

(2) The licensee shall schedule with the Department a final construction inspection when the project is complete and all furnishings and equipment are in place, but prior to utilization.

R432-4-18. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and approve occupancy only after as-built drawings have been approved by the Department and the Department has conducted a construction inspection.

(2) The licensee must correct all noncompliant items and pay the full plans review fee and inspection fee in accordance with the established fee schedule prior to licensure and patient occupancy.

R432-4-19. Existing Buildings Without Plans.

(1) If plans are not available for existing buildings, or for facilities requesting an initial license or license category change, the licensee may submit to the Department the following information:

- (a) a functional program described in R432-4-15;
- (b) a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the material submitted and within 30 days after receipt of the required material, furnish to the licensee a letter of approval or rejection. The Department

may provide, at its option, a report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department follow up inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee must pay an inspection fee in accordance with the fee schedule approved by the Legislature.

(5) The Department may issue a license when the building is in compliance with all licensing rules.

R432-4-20. Construction Phasing.

Projects involving remodeling or additions to existing buildings shall be scheduled and phased to minimize disruption to the occupants of facilities and to protect the occupants against construction traffic, dust, and dirt from the construction site.

R432-4-21. Outpatient Unit Features.

(1) If a building entrance is used to reach outpatient services, the entrance must be at grade level, clearly marked, and located to minimize the need for outpatients to traverse other program areas. The outpatient surgery discharge location must provide protection from the weather by canopies that extend from the building to permit sheltered transfer to an automobile.

(2) Lobbies of multi-occupancy buildings may be shared if the design prohibits unrelated traffic within or through units or suites of the licensed health care facility.

R432-4-22. Standards for Accessibility.

(1) At least one drinking fountain, toilet, and handwashing facility shall be available on each floor for persons with disabilities.

(2) Each room required to be accessible to persons utilizing wheelchairs shall comply with ADA/ABA-AG.

R432-4-23. General Construction.

(1) Guidelines for Design and Construction of Health Care Facilities 2010 edition, Part 1 and Part 6, are adopted and incorporated by reference except as modified in this section. Other sections of the Guidelines apply to specific facility types as identified elsewhere in this rule or in construction rules specific to individual license categories.

(2) If a modification is cited for the Guidelines, the modification supersedes conflicting requirements of the Guidelines.

(3) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

(4) Waste Processing Systems. Facilities shall provide sanitary storage and treatment areas for the disposal of all categories of waste, including hazardous and infectious wastes using techniques acceptable to the Utah Department of Environmental Quality, and the local health department having jurisdiction.

(5) Windows, in rooms intended for 24-hour occupancy, shall open to the building exterior or to a court which is open to the sky.

(a) Windows shall be equipped with insect screens.

(b) Operation of windows shall be restricted to a maximum opening of six inches to prevent escape or suicide.

(c) Window opening shall be restricted regardless of the method of operation or the use of tools or keys.

(6) Trash chutes, laundry chutes, dumb waiters, elevator shafts, and other similar systems shall not pump contaminated air into clean areas.

(7) All public and patient toilet and bath areas must have grab bars. Grab bar sizes and configurations shall comply with ADA/ABA-AG.

(8) Each patient handwashing fixture shall have a mirror. Patient toilet and bath rooms that are required to be accessible to persons utilizing wheel chairs shall have mirrors installed in accordance with ADA/ABA-AG.

(9) If showers or tubs contain soap dishes or shelves, they shall be recessed.

(10) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(11) Floors and bases of kitchens, toilet rooms, bath rooms, janitor's closets and soiled workrooms shall be homogenous and shall be coved. Other areas subject to frequent wet cleaning shall have coved bases that are tight fitting to the floor.

(12) Acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in patient areas, nurse stations, dayrooms, recreation rooms, dining areas, and waiting areas.

(13) Carpet.

Carpet in institutional occupancy patient areas, except public lobbies and offices, shall be treated to meet the following microbial resistance ratings as tested in accordance with test methods of the American Association of Textiles, Chemists, and Colorists (AATCC):

(a) Rating: minimum 90% bacterial reduction, test method: AATCC 100.

(b) Rating: maximum 20% fungal growth, test method: AATCC 174-99.

(c) Rating: Exhibits no zone of inhibition, test method: AATCC 174-99.

(d) Closed cell resilient backed carpet may be used in lieu of anti-microbial carpet.

(e) Carpet and padding shall be stretched taut and be free of loose edges to prevent tripping.

(14) Signs shall be provided as follows:

(a) General and circulation direction signs in corridors;

(b) Identification on or by the side of each door; and

(c) Emergency evacuation directional signs.

(15) Elevators.

Elevators intended for patient transport shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

(16) All rooms and occupied areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and patient rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(a) Bottoms of ventilation openings shall be located at least three inches, above the floor.

(b) Supply and return systems shall be in ducts. Common returns using corridors or attic spaces as plenums are prohibited.

(i) Plenum returns for HVAC systems serving only nonpatient care areas shall be permitted.

(c) Evaporative cooling where the airstream is exposed to a wet coil, a mat, or an open reservoir, are prohibited except for laundry processing areas and kitchen hoods that provide 100% exhaust air.

(17) In facilities other than general hospitals, specialty hospitals, and nursing care facilities, hot water recirculation is not required if the linear distance along the supply pipe from the water heater to the fixture does not exceed 50 feet.

(18) Bed pan washing devices may be deleted from inpatient toilet rooms where a soiled utility room is within the unit which includes bed pan washing capability.

(19) Building sewers shall discharge into a community sewer system. If a system is not available, the facility shall treat its sewage in accordance with local requirements and Utah

Department of Environmental Quality requirements.

(20) Dishwashers and other kitchen food storage and cooking appliances shall be National Sanitation Foundation, NSF, approved and shall have the NSF seal affixed.

(21) Electrical materials shall be listed as complying with standards of Underwriters Laboratories, Inc. or other equivalent nationally recognized standards.

(a) Approaches to buildings and all spaces within the buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with requirements shown in Tables 3A and 3B of Recommended Practice 29-06, Lighting for Hospitals and Health Care Facilities, by the Illuminating Engineering Society of North America.

(b) Parking lots shall have fixtures for lighting to provide light levels as recommended in IESNA Lighting for Parking Facilities (RP-20-1998).

(c) Receptacles and receptacle cover plates on the electrical emergency system shall be red.

(d) The activating device for nurse call stations shall be of a contrasting color to the adjacent floor and wall surfaces to make it easily visible in an emergency.

(e) Fuel storage capacity of the emergency generator shall permit continuous operation of the facility for 48 hours.

(f) Building electrical services connected to the emergency electrical source must comply with the specific rules for each licensure category.

R432-4-24. General Construction, Patient Service Facilities.

The Guidelines for Design and Construction of Health Care Facilities 2010 edition, (Guidelines), are incorporated and adopted by reference and shall be met except as modified in this section. Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(1) General Hospitals shall comply with Guidelines sections 2.1 and 2.2.

(a) The following paragraphs of the appendix of the Guidelines are also adopted by reference as requirements.

(i) A2.2-2.2.6.1 Nurse station locations shall permit visual observation of traffic into the unit.

(ii) A2.2-3.1.3.6(4) Emergency Department pediatric rooms must provide soundproofing with a STC rating for walls and ceiling assemblies of not less than 50.

(iii) A2.2-3.1.3.6(9) Exterior portable decontamination units in accordance with this paragraph shall be acceptable to meet the requirement for emergency department decontamination and may be provided in lieu of decontamination rooms within the building. Portable units shall have the capability for heating shower water and for heating ventilation air.

(iv) A2.2-3.1.8 A patient hygiene shower with direct access to a sink and toilet shall be provided in the emergency department.

(v) A2.2-3.1.8.1 A bereavement room in the emergency department shall be provided.

(vi) A2.2-3.3.3.3 Separate pediatric and adult post anesthesia care rooms shall be provided.

(vii) A2.2-3.12 Hyperbaric Suites shall meet the requirements of this section.

(2) Critical Access Hospitals shall comply with Guidelines sections 2.1 and 2.3.

(3) Freestanding satellites and in-house outpatient programs shall comply with Guidelines sections 3.1, 3.2, 3.3, 3.7 and 3.9.

(4) Abortion Clinics shall comply with Guidelines sections 3.1 and 3.2.

(5) Acute care hospital beds that swing to nursing home care and payment shall also comply with R432-5.

(6) Hospitals must have at least one nursing unit of at least six beds containing patient rooms, patient care spaces, and

service areas.

(a) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the service areas shall be contiguous to each nursing unit served.

(b) Identifiable spaces shall be provided for each of the required services.

(c) Facility services shall be accessible from common areas without compromising patient privacy.

(7) Patient room area is identified in each individual construction rule for the licensure category rule.

(a) The closets in each patient room shall be a minimum of 22 inches deep by at least 22 inches wide and high enough to hang full length garments and to accommodate two storage shelves.

(b) Pediatric units must have at least one tub room with a bathtub, toilet and sink convenient to the unit. The tub room may be omitted if all patient rooms contain a tub in the toilet room.

(8) The facility must provide linen services as follows:

(a) Processing laundry may be done within the facility, in a separate building on or off site, or in a commercial or shared laundry.

(b) If laundry is processed by an outside commercial laundry, the following shall be provided:

(i) a separate room for receiving and holding soiled linen until ready for transport;

(ii) a central, clean linen storage and issuing room(s) to accommodate linen storage for four days operation or two normal deliveries, whichever is greater; and

(iii) handwashing facilities in each area where unbagged, soiled linen is handled.

(c) If the facility processes its own laundry, within the facility or in a separate building, the following shall be provided:

(i) a receiving, holding, and sorting room for control and distribution of soiled linen;

(ii) a washing room with handwashing facilities and commercial equipment that can process a seven day accumulation of laundry within a regularly scheduled work week;

(iii) a drying room with dryers adequate for the quantity and type of laundry being processed; and

(iv) a clean linen storage room with space and shelving adequate to store one half of all linens and personal clothing being processed.

(d) Soiled linen chutes shall discharge directly into the receiving room or in a room separated from the washing room, drying room and clean linen storage.

(e) Prewash facilities may be provided in the receiving, holding and sorting rooms.

(f) If laundry is processed by the facility, either a two or three room configuration may be used as follows;

(i) A two room configuration shall consist of the following:

(A) a room housing soiled linen receiving, sorting, holding, and prewash facilities; washers; and handwashing facilities; and

(B) a room housing dryers; clean linen folding, sorting, and storage facilities; and handwashing facilities.

(ii) A three room configuration shall consist of:

(A) a soiled linen receiving, sorting, holding room with prewash and handwashing facilities;

(B) a combination washer and dryer room arranged so linen flows from the soiled receiving area to the washers, to the dryers, and then to clean storage; and

(C) a clean storage room with folding, sorting, storage and handwashing facilities.

(iii) Physical separation shall be maintained between rooms by means of self closing doors.

(iv) Air movements shall be from the clean area to the soiled area. Air from the soiled area shall be exhausted directly to the outside.

(g) Handwashing sinks shall be provided and located within the laundry areas to maintain the functional separation of the clean and soiled processes.

(h) Rooms shall be arranged to prevent the transport of soiled laundry through clean areas and the transport of clean laundry through soiled areas.

(i) Convenient access to employee lockers and lounges shall be provided.

(j) Storage for laundry supplies shall be provided.

(k) A cart storage area for separate parking of clean and soiled linen carts shall be provided out of normal traffic paths.

R432-4-25. Excluded Sections and Paragraphs of the Guidelines.

The following sections and paragraphs of the Guidelines do not apply:

(1) Section 2.2-5.2 Linen Services.

(2) Section 1.2-5 Patient Handling and Movement Assessment.

(3) Section 1.2-6.2 Sustainable Design.

(4) Paragraph 2.2-2.16.2.5(2) special structural requirements for sinks in bariatric rooms.

(5) Paragraph 3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance.

(6) Paragraph 3.1-7.2.2.3(1)(b) The requirement for 3'-8" wide doors shall apply only to doors along gurney travel routes, not to wheelchair accessible routes.

(7) Paragraph 3.1-8.2.6.1 (2) requiring on site boiler fuel supply at outpatient facilities for emergency use.

R432-4-26. Penalties.

The Department may assess a civil money penalty of up to \$10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health care facilities

February 21, 2012

Notice of Continuation August 12, 2013

26-21-5

26-21-16

R432. Health, Family Health and Preparedness, Licensing.**R432-5. Nursing Facility Construction.****R432-5-1. Legal Authority.**

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-5-2. Purpose.

The purpose of this rule is to promote the health and welfare through the establishment and enforcement of construction standards. The intent is to provide residential like environments and encourage social interaction of residents.

R432-5-3. Definitions.

(1) "Special Care Unit" means a physical area within a licensed facility designated for the housing and treatment of residents diagnosed with a specifically defined disease or medical condition.

(2) "Room or Office" when used in this rule describes a specific, separate, enclosed space for the service. When room or office is not used, multiple services may be accommodated in one enclosed space.

R432-5-4. Description of Service.

(1) A nursing unit shall consist of resident rooms, resident care spaces, and services spaces.

(2) Each nursing unit shall contain at least four resident beds.

(3) Rooms and spaces composing a nursing unit shall be contiguous.

(4) A nursing care facility operated in conjunction with a general hospital or other licensed health care facility shall comply with all provisions of this section. Dietary, storage, pharmacy, maintenance, laundry, housekeeping, medical records, and laboratory functions may be shared by two or more facilities.

(5) Special care units shall comply with all provisions of R432-5.

R432-5-5. General Design Requirements.

R432-4-1 through R432-4-23, and R432-4-24(8) apply with the following modifications.

(1) Fixtures in all public and resident toilet and bathrooms shall comply with Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines, (ADA/ABA-AG). These rooms shall be wheelchair accessible with wheelchair turning space within the room.

(2) Lavatories, counters, and door clearances within resident rooms shall be wheelchair accessible.

R432-5-6. General Construction Requirements.

(1) Nursing facilities shall be constructed in accordance with the Guidelines for Design and Construction of Health Care Facilities (Guidelines), Sections 4.1 and 4.2, 2010 edition which is adopted and incorporated by reference.

(2) Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

R432-5-7. Nursing Unit.

(1) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the shared spaces and service areas shall be contiguous to each nursing unit served.

(2) Facility service areas shall be accessible from common areas without compromising resident privacy.

(3) Each nursing unit shall have a maximum number of 60 beds.

(4) At least two single-bed rooms, each with private toilet room containing a toilet, lavatory, and bathing facility shall be provided for each nursing unit.

(a) In addition to the lavatory in the toilet room, in new construction and remodeling, a lavatory or handwashing sink

shall be provided in the resident room.

(b) Ventilation shall be continuous with not less than two outside air changes per hour with all air exhausted to the outside.

(5) Each resident sleeping room shall have a window in accordance with R432-4-23(5). Windows in resident rooms intended for sleeping shall be operable.

(6) Each resident closet shall be a minimum of 22 inches deep by 36 inches wide with a shelf to store clothing and a clothes rod positioned to accommodate full length garments.

(7) A nurse call system is not required in facilities which care for persons with mental retardation or developmental disabilities. With prior approval of the Department, a nursing facility may modify the system to alleviate hazards to residents.

(8) Handwashing facilities shall be located near the nursing station and the drug distribution station.

(9) A staff toilet room may also serve as a public toilet room if it is located in the nursing unit.

(10) A clean workroom or clean holding room with a minimum area of 80 square feet shall provide for preparing resident care items.

(a) The clean work room shall contain a counter, handwashing facilities and storage facilities.

(b) The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(11) If a medical cart is used it shall be under visual control of staff.

(a) Double locked storage shall be provided for controlled drugs.

(b) Provisions shall be made for receiving, assembling, and storage of drugs and other pharmacy products.

(12) If a closed cart is used for clean linen storage, it shall be stored in a room with a self closing door. Storage in an alcove in a corridor is prohibited.

(13) Ice intended for human consumption shall be dispensed by self dispensing ice makers. Bin type storage units are prohibited.

(14) One bathtub and shower shall be provided on each nursing floor in addition to bath fixtures in resident toilet rooms.

(a) At least one shower on each floor shall be at least four feet square without curbs designed for use by a resident using a wheelchair. A gurney shower may be provided at the option of the facility and shall satisfy this requirement.

(b) Each resident bathtub and shower shall be in a separate room or enclosure large enough to ensure privacy and to allow staff to assist with bathing, drying, and dressing.

(15) At least one toilet room shall be provided on each floor containing a nursing unit to be used for resident toilet training.

(a) The room shall contain a toilet and lavatory with wheelchair turning space within the room.

(16) A toilet room with direct access from the bathing area shall be provided at each central bathing area if a toilet is not otherwise provided in the bathing area. The toilet training facility may serve this function if there is direct access from the bathing area.

(17) Doors to toilet rooms shall be equipped with hospital privacy locks or other hardware that protects resident privacy and permits access from the outside without the use of keys or tools in case of an emergency.

(18) A handwashing fixture shall be provided in each toilet room.

(19) An equipment storage room with a minimum area of 120 square feet for portable equipment shall be provided.

R432-5-8. Resident Support Areas.

(1) Occupational therapy service areas may be counted in the calculation of support space.

(2) Physical Therapy, personal care room, and public waiting lobbies shall not be included in the calculation of support space.

(3) There shall be resident living areas equipped with tables, reading lamps, and comfortable chairs designed to be usable by all residents.

(4) There shall be a general purpose room with a minimum area of 100 square feet equipped with a table and comfortable chairs.

(5) A minimum area of ten square feet per bed shall be provided for outdoor recreation. This space shall be provided in addition to the setbacks on street frontages required by local zoning ordinances.

(6) Examination and Treatment rooms.

(a) An examination and treatment room shall be provided except when all resident rooms are single bed rooms.

(b) An examination and treatment room may be shared by multiple nursing units.

(c) When provided, the room shall have a minimum floor area of 100 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or moveable.

(d) The room shall contain a lavatory equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(7) In addition to facility general storage areas, at least five square feet per bed shall be provided for resident storage.

R432-5-9. Rehabilitation Therapy.

(1) A separate storage room for clean and soiled linen shall be provided contiguous to the rehabilitation therapy area.

(2) Storage for rehabilitation therapy supplies and equipment shall be provided.

R432-5-10. General Services.

(1) Linen services shall comply with R432-4-24(8).

(2) There shall be one housekeeping room for each nursing unit.

(3) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-5-11. Waste Storage and Disposal.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques defined by the Utah Department of Environmental Quality, and the local health department having jurisdiction.

R432-5-12. Details and Finishes.

(1) Grab bars shall be installed in all toilet rooms in accordance with the ADA/ABA-AG.

(2) Corridor and hallway handrails shall comply with ADA/ABA-AG. The top of the rail shall be 34 inches above the floor, except for areas serving children and other special care areas. Corridor handrails shall have a graspable profile with finger wrap recesses not less than 5/8" deep. Handrails shall have color that contrasts to the wall.

(3) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(4) Signs shall be provided as follows:

(a) general and circulation direction signs in corridors;

(b) identification at each door; and

(c) emergency directional signs;

(d) all signs in corridors shall comply with ADA/ABA-AG.

R432-5-13. Elevators.

At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-5-14. Mechanical Standards.

(1) Mechanical tests shall be conducted prior to final Department construction inspection.

(2) Written test results shall be retained in facility maintenance files and available for Department review.

(3) Air Conditioning, Heating, and Ventilating Systems shall include:

(a) A heating system capable of maintaining a temperature of 80 degrees Fahrenheit in areas occupied by residents.

(b) A cooling system capable of maintaining a temperature of 72 degrees Fahrenheit in areas occupied by residents.

(4) Plumbing and other Piping Systems shall include:

(a) Handwashing facilities that are arranged to provide sufficient clearance for single lever operating handles.

(b) Kitchen grease traps that are located and arranged to permit access without the need to enter food preparation or storage areas.

(c) Hot water provided in patient tubs, showers, whirlpools, and handwashing facilities that is regulated by thermostatically controlled automatic mixing valves. These valves may be installed on the recirculating system or on individual inlets to appliances.

R432-5-15. Electric Standards.

(1) Operators shall maintain written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(2) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with the requirements of the Illuminating Engineering Society of North America (IESNA). Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Recommended Practice RP-20-1998, Lighting for parking facilities by the Illuminating Engineering Society of North America.

(3) Automatic emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(4) Each examination and work table shall have access to a minimum of two duplex outlets.

(5) Receptacles and receptacle cover plates on the emergency system shall be red.

(6) An on-site emergency generator shall be provided in all nursing care facilities except small ICF/MR health care facilities of 16 beds or less.

(a) In addition to requirements of NFPA 70, Section 517-40, the following equipment shall be connected to the critical branch of the essential electrical system.

(i) heating equipment necessary to provide heated space sufficient to house all residents under emergency conditions,

(ii) duplex convenience outlets in the emergency heated area at the ratio of one duplex outlet for each ten residents,

(iii) nurse call system,

(iv) one duplex receptacle in each resident bedroom.

(b) Fuel storage shall permit continuous operation of the services required to be connected to the emergency generator for 48 hours.

(c) Skilled nursing facilities that accept residents that are dependant on ventilators or other electrically operated life support equipment shall be equipped with Type I essential electrical systems that meet the requirements of NFPA 99 and NFPA 70, Section 517-30.

R432-5-16. Exclusions to the Guidelines.

The following sections of the Guidelines do not apply:

- (1) Linen Services, section 4.2-5.2.
- (2) Clusters, paragraph 4.2-2.2.1.3(2)(a), and Household models, paragraph 4.2-2.1.3(2)(b). These design concepts have proven beneficial in numerous cases, but are optional. However, the Department encourages new construction projects to consider these concepts.

R432-5-17. Penalties.

The Department may assess a civil money penalty of up to \$10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health care facilities**February 21, 2012****Notice of Continuation August 12, 2013****26-21-5****26-21-16**

R432. Health, Family Health and Preparedness, Licensing.**R432-6. Assisted Living Facility General Construction.****R432-6-1. Legal Authority.**

This rule is promulgated pursuant to Title 26, Chapter 21. Sections numbered less than R432-6-99 apply to all assisted living facilities. Sections in the R432-6-100 series apply to Type I assisted living facilities. Sections in the R432-6-200 series apply to Type II assisted living facilities.

R432-6-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving assisted living services through the establishment and enforcement of construction standards.

R432-6-3. Definitions.

(1) Assisted Living Facility Type I is a residential facility that provides assistance with activities of daily living and social care to two or more ambulatory residents who require protected living arrangements.

(2) Assisted Living Facility Type II is a residential facility that provides coordinated supportive personal and health care services to two or more semi-independent residents.

(a) "Semi-independent" means a person who is:

(i) physically disabled but able to direct his or her own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility, or to a zone or area of safety, with the physical assistance of one person.

(b) "Resident Living Unit" means:

(i) a one bedroom unit which may also include a bathroom and additional living space; or

(ii) a two bedroom unit which may also include a bathroom and additional living space.

(c) "Additional Living Space" means a living room, dining area and kitchen, or a combination of these rooms or areas in a resident living unit.

(3) "Room" or "office" means a specific, separate, fully enclosed space for the service. If "room" or "office" is not used, multiple services may be accommodated in one enclosed space.

(4) Assisted Living Facilities Type I and Type II may be classified as either large, small or limited capacity.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses up to five residents.

R432-6-4. General Requirements.

(1) The licensee is responsible for assuring compliance with R432-6.

(2) If testing and certification compliance can only be verified through written documentation, the documentation shall be maintained in the facility for Department inspection.

(3) If conflicts exist between applicable codes or if other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the most restrictive requirement applies.

(4) If the Department has concerns about compliance, the licensee is responsible to demonstrate compliance.

R432-6-5. Codes and Code Compliance.

(1) The following codes and standards enforced by other agencies or jurisdictions apply to assisted living facilities. The licensee shall obtain documentation of compliance for the following codes and standards from the authority having jurisdiction and submit the documentation to the Department:

(a) Local zoning ordinances;

(b) International Building Code;

(c) International Plumbing Code;

(d) International Fire Code;

(e) International Mechanical Code; and

(f) National Electrical Code, NFPA 70.

(2) The licensee shall obtain a certificate of occupancy from the local building official having jurisdiction.

(3) The licensee shall obtain a certificate of fire clearance from the Fire Marshal having jurisdiction.

(4) The licensee shall submit a copy of the certificates to the Department prior to resident utilization of newly constructed facilities, additions or remodels of existing facilities.

(5) Where portions of the building are required to be accessible to persons with disabilities, they shall comply with the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA/ABA-AG).

R432-6-6. Application of Codes for New and Existing Buildings.

(1) New construction, additions and remodels to existing buildings shall comply with Department rules in effect on the date the first drawings are received by the Department.

(2) If the remodeled area or addition in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with rules governing new construction which are in effect on the date the first drawings are submitted to the Department.

(3) During remodeling, new construction or additions, the safety level which existed prior to the start of work shall be maintained.

(4) Current licensed buildings shall conform to Department construction rules in effect at the time of initial facility licensure.

(5) Buildings which are changing license classification shall comply with requirements for new construction.

(6) Buildings undergoing refurbishing shall comply with the following:

(a) All materials installed as part of a refurbishing project shall comply with flame spread ratings required by the fire marshal having jurisdiction.

(b) The facility shall keep written documentation of compliance with codes and standards.

R432-6-7. Plans Review and Approval and Construction Inspection.

(1) Health facilities shall obtain Department approval before occupying any newly constructed buildings or remodeled systems, or areas in existing buildings.

(2) Prior to submitting documents for plans review, the facility architect and licensee must schedule a conference with Department representatives to outline the required plans review process.

(3) The licensee shall submit the following for Department review:

(a) a functional program;

(b) schematic drawings;

(c) design development drawings; and

(d) working drawings, including specifications.

(4) The Department shall initiate its review when it receives all required documents and fees.

(5) Working drawings and specifications for new construction, additions, or remodeling shall have the seal of a Utah licensed architect affixed in compliance with Section 58-3a-602.

(6) Plans approved by the Department do not relieve the licensee of responsibility for full compliance with R432-6.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or latest plan review response

letter if construction has not commenced. After a 12 month lapse the licensee must resubmit plans to the Department with a new plan review paid. A new letter of approval must be obtained from the Department.

(8) The Department shall issue an initial license, renewal license, or modified license only after the Department has determined the facility conforms with applicable licensure construction rules and has obtained all required clearances and certifications.

R432-6-8. Functional Program.

(1) The licensee must furnish to the Department a functional program which includes the following:

- (a) the purpose and license category of the facility;
- (b) services offered, including a detailed description of each service;
- (c) ancillary services required to support each function or program;
- (d) services offered under contract by outside providers and the required in-house facilities to support these services;
- (e) services shared with other health care licensure categories or functions;
- (f) physical and mental condition of intended residents;
- (g) ambulatory condition of intended residents, such as mobile or ambulatory;
- (h) special electrical requirements related to resident care; and
- (i) communication systems and other special systems.

(2) The functional program must include a description of how essential core services will accommodate increased demand if the building is designed for later expansion.

R432-6-9. Drawings.

(1) Drawings shall show all equipment necessary for the operation of the facility, such as kitchen equipment, laundry equipment, and similar equipment.

(2) Schematic drawings, which may be single line, shall contain the following information:

- (a) list of applicable building codes;
- (b) location of the building on the site and access to the building for public, emergency, and service vehicles;
- (c) site drainage and any natural drainage channels which traverse the site;
- (d) any unusual site conditions, including easements which might affect the building or its appurtenances;
- (e) relationships of rooms and areas within departments;
- (f) number of resident beds; and
- (g) total building area or area of additions or remodeled portions.

(3) Design development drawings, drawn to scale, shall contain the following information:

- (a) room dimensions and room square footage;
- (b) site plan, showing relationship to streets and vehicle access;
- (c) location and size of public utilities; and
- (d) types of mechanical, electrical and auxiliary systems.

(4) Working drawings shall include all the drawings outlined above in R432-6-9(1) through (3).

(a) The licensee shall provide one copy of completed working drawings and specifications which shows all equipment necessary for the operation of the facility such as kitchen, laundry, and other equipment.

(b) The Bureau of Licensing will keep the final drawings for 12 months after final approval of the project. Drawings may then be returned to the owner upon request.

(5) Within 30 days after receipt of required documentation and fee, the Department shall provide to the licensee and the project architect a written report of plans review outlining necessary modifications required to comply with Department

rules.

(6) If changes are necessary, the licensee shall submit revised plans for review and final approval.

R432-6-10. Construction Inspections.

- (1) The Department may conduct interim inspections.
- (2) Prior to resident utilization, the licensee shall schedule a final inspection with the Department when the project is complete and furnishings and equipment are in place.

R432-6-11. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and authorize resident utilization only after it has approved as-built drawings and has conducted a construction inspection.

(2) The licensee shall correct all non-compliant items and pay the full plans review fee and inspection fee.

R432-6-12. Buildings Without Plans.

(1) If plans are not available for existing buildings involved in initial licensing or license category change, the licensee shall submit to the Department a functional program as defined in subsection R432-6-8, and a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the functional program and furnish to the licensee a letter of approval or rejection within 30 days after receipt of the material. The Department may provide, at its option, a written report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee shall pay the inspection fee.

(5) The Department shall issue a license when the building is in compliance with all licensing rules.

R432-6-13. Construction Phasing.

Projects involving remodeling or additions to an occupied building shall be programmed and phased to minimize detrimental effects to and disruption of residents and employees of the facility by protecting against construction traffic, dust, and dirt from the construction site.

R432-6-14. Site Location.

(1) The site shall be accessible to both visitor and service vehicles.

(2) Facilities shall be located to ensure that public utilities are available.

R432-6-15. Site Design.

The site design shall include the following:

- (1) Surrounding land for outdoor activities;
- (2) Paved roads for access to service docks and entrances;
- (3) Fire equipment access as required by the fire marshal; and

(4) Paved walkways for pedestrian traffic and from every required exit to a dedicated public way.

R432-6-16. Parking.

(1) Parking requirements must comply with local zoning ordinances.

(2) Parking spaces for persons with disabilities shall be as level as practical and conform to requirements for disabled parking access as required by ADA/ABA-AG.

(a) The extra width required for disabled parking may be used as part of a common walkway.

(b) Parking spaces for the disabled shall be directly

accessible to the facility without requiring the disabled to go behind parked cars or cross vehicle traffic lanes.

R432-6-17. Elevators.

All large multi-level assisted living facilities shall have an elevator which serves all levels. At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-6-18. Special Design Features.

(1) Building entrances in large facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(2) Lobbies of multi-occupancy buildings may be shared if the design precludes unrelated traffic within or through units or suites of the licensed health care facility.

(3) At least one building entrance shall be accessible to persons with physical disabilities. Entrances requiring ramps with a slope in excess of 1:20 shall have steps as well as ramps.

(4) In Large facilities where all resident units do not have kitchens or toilet facilities, at least one drinking fountain or water cooler, toilet, and handwashing fixture on each floor shall be wheelchair accessible.

(5) Each resident bedroom or sleeping room shall have a wardrobe, closet, or locker for each resident occupying the unit. The closet, wardrobe or locker shall have a shelf and a hanging rod, with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall, suitable for hanging full-length garments.

R432-6-19. General Standards for Details.

(1) Placement of drinking fountains, telephone booths, or vending machines shall not restrict corridor traffic or reduce required corridor width.

(2) Doors and windows shall comply with the following requirements:

(a) Rooms which contain bathtubs, showers, or water closets for resident use shall be equipped with doors and hardware which permit emergency access.

(b) Doors, except those to spaces such as small closets not subject to occupancy, shall not swing into corridors in a manner which will obstruct traffic or reduce corridor width. Large walk-in type closets are occupiable spaces.

(c) Windows which open to the exterior shall be equipped with insect screens.

(d) Resident rooms and suites intended for 24-hour occupancy shall have operable windows which open to the exterior of the building or to a court open to the sky.

(e) Doors, sidelights, borrowed lights, and windows glazed to within 18 inches of the floor shall be constructed of safety glass, wired glass, or plastic break-resistant material that creates no dangerous cutting edges when broken.

(f) Safety glass, wired glass, or plastic break-resistant materials shall be used for wall openings in recreation rooms, exercise rooms, and other activity areas unless prohibited in the International Building Code.

(g) Doors used for shower and bath enclosures shall be made of safety glass or plastic glazing materials.

(3) Trash chutes, laundry chutes, dumbwaiters, elevator shafts, and other similar systems shall not allow movement of contaminated air into clean areas.

(4) Thresholds and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

(5) All lavatories must be equipped with hand drying facilities.

(a) Lavatories that are expected to serve more than one

resident shall have single use paper towel dispensing units or cloth towel dispensing units that are enclosed to protect towels from being soiled. Double occupancy units are not required to provide towel dispensing units if occupied by two related persons.

(b) Lavatories shall be anchored to withstand an applied vertical load of not less than 250 pounds on the fixture front.

R432-6-20. General Standards for Finishes.

(1) Curtains and draperies shall be affixed to permanently mounted tracks or rods.

(2) Floors and walls shall be designed and constructed as follows:

(a) Floor materials shall be easily cleanable;

(b) Floors in areas used for food preparation or food assembly shall be water-resistant. Floor surfaces, including tile joints, shall be resistant to food acids.

(c) In areas subject to frequent wet-cleaning, floor materials shall not be physically affected by germicidal cleaning solutions.

(d) Floors in shower and bath areas, kitchens, and similar work areas subject to traffic while wet shall have non slip surfaces.

(e) Floors and wall bases of kitchens, toilet rooms, bath rooms, janitors' closets, and other areas subject to frequent wet cleaning shall be homogeneous with coved bases and tightly sealed seams.

(f) Wall finishes shall be washable and, in the immediate vicinity of plumbing fixtures, smooth and moisture-resistant.

(g) Finish, trim, floor, and wall construction in dietary and food preparation areas shall be free of insect and rodent harboring spaces.

(h) Floor and wall openings for pipes, ducts, conduits, and joints of structural elements shall be tightly sealed to resist passage of fire and smoke and minimize entry of pests.

(i) Carpet and padding shall be stretched taut and be free of loose edges.

(j) Carpet pile shall be sufficiently dense so as not to interfere with the operation of wheel chairs, walkers, wheeled carts, and other wheeled equipment.

(k) Carpet and other floor coverings shall comply with provisions of ADA/ABA-AG.

(3) Ceiling finishes shall be designed and constructed as follows:

(a) Finishes of all exposed ceilings and ceiling structures in resident rooms and staff work areas shall be readily cleanable with routine housekeeping equipment.

(b) In large facilities, acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in resident areas, dayrooms, recreation rooms, dining areas, and waiting areas.

(c) Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire resistive purposes.

(4) The following signs shall be provided:

(a) general and circulation direction signs in corridors of large assisted living facilities;

(b) emergency evacuation directional signs for all facilities; and

(c) room identification signs on the corridor side of all corridor doors.

R432-6-21. Building Systems.

(1) Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the State Department of Environmental Quality, and the local health department having jurisdiction.

(2) The following engineering service and equipment shall be provided for effective service and maintenance functions:

- (a) rooms for mechanical equipment or electrical equipment;
- (b) a storage room for building maintenance supplies;
- (c) yard equipment and supply storage areas located so that equipment may be moved directly to the exterior of the building without passing through building rooms or corridors;
- (d) central storage for supplies, equipment and miscellaneous storage in large and small facilities; and
- (e) in large facilities, a separate maintenance room or office.

(3) In small and large facilities a housekeeping room shall be located on each floor of the assisted living facility. In large facilities this room shall have a floor receptor or service sink. All housekeeping rooms shall be mechanically exhausted.

(4) Sound Control for large assisted living facilities must be designed and constructed to meet the noise reduction criteria as outlined in Table 1.

TABLE 1
Sound Transmission Limitations

	Airborne Sound Transmissions Class	
	Partitions	Floors
Residents' room to residents' room	35	40
Public space to residents' room	40	40
Service areas to residents' room	45	45

(a) Sound transmission class shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boilers and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above resident's rooms, offices, and similarly occupied space shall be effectively isolated from the floor.

(d) Recreation rooms, exercise rooms, equipment rooms and similar spaces where impact noises may be generated may not be located directly over residents' rooms.

R432-6-22. Mechanical, Heating, Cooling and Ventilation Systems.

(1) The HVAC system design shall prevent large temperature differentials, high velocity supply, excessive noise, and air stagnation.

(2) Air supply and exhaust in rooms for which no minimum total air change rate is mandated by Table 2 may vary to zero in response to room load.

(3) Mechanical ventilation shall be provided independent of thermostat-controlled demands.

(a) Minimum total air change, room temperature, and temperature control shall comply with standards in Table 2.

(b) To maintain asepsis and odor control, airflow supply and exhaust shall be controlled to ensure movement of air from clean to less clean areas.

(c) Rooms containing heat-producing equipment shall be insulated and ventilated to prevent the floor surface above or the walls of adjacent occupied areas from exceeding a temperature of ten degrees Fahrenheit above ambient room temperature.

(d) All rooms and occupiable areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and resident rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature

extremes. Outside ventilation air shall be tempered to between room temperature and the supply air temperature for the appropriate heating or cooling mode.

(e) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(f) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(g) Equipment must be available to provide essential heating during a loss of normal heating capability. All emergency heating devices shall be approved by the local fire jurisdiction.

(h) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable. Exhaust fans may be on the inlet side if individually ducted directly to the outside.

(i) Fresh air intakes shall be located at least 10 feet from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or areas subject to vehicular exhaust or other noxious fumes.

(j) All ventilation, air conditioning systems and air delivery equipment, including through wall units, shall be equipped with filters as follows:

(i) All areas for resident care, and those areas providing direct service or clean supplies shall provide at least one filter bed with a minimum of 30% efficiency.

(ii) All administrative, bulk storage, soiled holding, food preparation and laundries shall provide at least one filter bed with a minimum of 25% efficiency.

(k) Gravity exhaust may be used where conditions permit for boiler rooms, central storage, and other nonresident areas.

(l) The ventilation system shall be air tested and balanced prior to the final Department construction inspection. The initial test results and air balancing report shall be maintained for Department review.

TABLE 2
Ventilation Requirements

AREA DESIGNATION	AIR MOVEMENT IN RELATION TO ADJACENT AREAS	MINIMUM AIR CHANGES OF OUTDOOR AIR PER HOUR TO ROOM	MINIMUM TOTAL AIR CHANGES PER HOUR	ALL AIR EXHAUSTED OUTSIDE
Bath and Shower Rooms	N	Optional	10	YES
Clean Linen Storage	P	Optional	2	Optional
Dietary Day Storage	V	Optional	2	Optional
Food Preparation Center	E	2	10	YES
Janitors' Closets	N	Optional	10	YES
Laundry	V	2	10	YES
Corridor	E	Optional	2	Optional
Grooming Area	N	2	2	YES
Resident Room	E	Greater	2	Optional of one air change or minimum 20 CFM/person
Soiled	N	Optional	10	YES

Linen holding				
Toilet Rooms	N	Optional	10	YES
Ware Washing	N	Optional	10	YES
Common Areas	E	2	2	Optional

E = Equal; N = Negative; P = Positive; V = Variable

(m) The requirements of Table 2 do not apply to limited capacity facilities. Limited capacity facilities shall provide exhaust for kitchens and bathrooms.

(n) If an existing building bathroom or toilet room is not exhausted to the outside, the licensee may submit a Request for Agency Action Variance to the Table 2 requirements at the time of initial licensing.

R432-6-23. Plumbing.

(1) Showers and tubs shall have non-slip or slip-resistant surfaces.

(2) Potable water supply systems shall comply with the following requirements:

(a) Water supply systems shall be designed with sufficient pressure to operate all fixtures and equipment during maximum demand.

(b) Each water service main, branch main, riser, and branch to a group of fixtures shall have a stop valve. A stop valve shall be provided for each fixture. Panels shall be provided for access to valves.

(c) All fixtures used by residents shall be trimmed with valves with cross, tee or single lever handles.

(3) Hot water systems shall meet the following requirements:

(a) As a minimum, water-heating systems shall provide supply capacity at temperatures and amounts indicated in Table 3. Water temperature shall be measured at the point of use or inlet to equipment.

TABLE 3
Hot Water Use

	Resident Care Areas	Dietary	Laundry
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Gallons per Hour per Bed	3	2	2
Temperature Centigrade	43	49	71
Temperature Fahrenheit	110	120	160

(b) Distribution systems that exceed 50 linear feet and that service resident care areas shall be under constant recirculation to provide continuous hot water to each outlet. The temperature of hot water for lavatories, showers and bathing shall not exceed 120 degrees Fahrenheit. Thermostatically controlled automatic mixing valves may be used to maintain hot water at these temperatures.

(c) 180 degrees Fahrenheit rinse water must be provided at the dishwasher if an approved low temperature chemical rinse is not utilized.

(d) 160 degrees Fahrenheit hot water must be available at the laundry equipment as needed.

(4) Quantities indicated for design demand of hot water are for general reference minimums and shall not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed.

(5) Drainage system shall comply with the following requirements:

(a) Building sewers shall discharge into community sewerage. Where such a system is not available, the facility shall treat its sewage in accordance with local requirements and

State Department of Environmental Quality requirements.

(b) Where overhead drain piping is exposed, special provisions shall be made to protect the space below from contamination from leakage, condensation, and dust particles. Approval of special provisions in food preparation, food service areas, and food storage areas shall be obtained from the local health department.

(c) Kitchen grease trap locations shall comply with local health department rules.

(6) Dishwashers and other kitchen food storage or cooking appliances shall be National Sanitation Foundation, NSF, approved and have the NSF seal affixed. Residential NSF certified appliances shall be acceptable.

R432-6-24. Electrical.

(1) In large assisted living facilities, panel boards serving normal lighting and appliance circuits shall be located on the same floor or on the same wing as the circuits served. Panels for emergency circuits, if provided, may serve the floors above and below for general resident areas and administration.

(2) Corridors shall be illuminated at night in accordance with Table 4. Corridor lighting shall be adjustable so that light levels may be reduced at night and still provide a maximum brightness ratio of 1:10.

(3) Light intensity shall be at or above the minimum foot-candle in accordance with Table 4. Values in table 4 are minimum maintained average illuminance measured at the task plane. Areas not shown in Table 4, including parking lots and approaches to the building, shall have fixtures to provide light levels as recommended in IES Recommended Practice RP-20-1998, Lighting for Parking Facilities by the Illuminating Engineering Society of North America, which is adopted and incorporated by reference.

TABLE 4
Assisted Living Facilities Lighting Standards

Physical Plant Area	Minimum Foot-candle
Corridors	
Day	15
Night	7.5
Exits	15
Stairways	15
Res. Room	
General	7.5
Reading/Mattress Level	30
Toilet area	30
Lounge	
General	7.5
Reading	30
Recreation	30
Dining	20
Dining and Recreation	30
Laundry	30

(4) Each resident room shall have a duplex grounded receptacle on every wall. If a TV jack is included, there must be an extra duplex receptacle on the wall with the TV jack.

(5) Duplex grounded receptacles for general use shall be installed no more than 50 feet apart in corridors, on either side, and within 25 feet of corridor ends.

(6) A night light shall be provided in each resident bedroom and bathroom.

R432-6-25. Food Service.

(1) Food service facilities and equipment shall comply with R392-100, the Utah Department of Health Food Service Sanitation Rules.

(2) Food service space and equipment shall be provided as follows:

(a) storage area for food supplies, including a cold storage area, for a seven-day supply of staple foods and a three-day supply of perishable foods;

- (b) food preparation area;
- (c) an area to serve and distribute resident meals;
- (d) an area for receiving, scraping, sorting, and washing soiled dishes and tableware;
- (e) a storage area for waste which is located next to an outside facility exit for direct pickup; and
- (f) a space for meal planning.

R432-6-26. Penalties.

The Department may assess a civil money penalty of up to \$10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

R432-6-100. Type I Facilities.

The following sections in the 100 series apply to Type I assisted living facilities.

R432-6-101. Occupancy Type.

- (1) Large assisted living facilities shall comply with I-1, International Building Code, requirements.
- (2) Small assisted living facilities shall comply with R-4, International Building Code, requirements.
- (3) Limited capacity assisted living facilities shall comply with R-3, International Building Code, requirements.

R432-6-102. Common Areas.

- (1) A common room or rooms shall be provided for dining, sitting, visiting, recreation, worship, and other activities.
 - (a) Common rooms shall have sufficient space and separation to promote and facilitate the activity without interfering with concurrent activities or functions in the building.
 - (i) In a small facility the common rooms shall be at least 28 square feet per bed, but no less than a total of 225 square feet.
 - (ii) In a large facility the common rooms shall be at least 30 square feet per bed. In a facility with 100 beds or more, the common rooms minimum square footage per bed may be reduced to 25.
 - (b) Space shall be provided for necessary equipment and storage of recreational equipment and supplies.

R432-6-103. Resident Units.

- (1) Minimum room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, and vestibules, shall be 100 square feet in single-bed rooms and 80 square feet per bed in multiple-bed rooms.
 - (a) The areas noted above are minimums and do not prohibit larger rooms.
 - (b) Resident units may not have more than two beds per unit
- (2) No room used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a residents' sleeping room.
- (3) No bedroom may be used as a passageway to another room, bath, or toilet other than those serving the bedroom.
- (4) Bedrooms shall open directly into a corridor or common living area, but shall not open into a food preparation area.
- (5) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-104. Toilet and Bathing Facilities.

- (1) Residents shall have privacy in toilet and bathrooms. Toilet and bathrooms shall be conveniently located.
- (2) Resident toilet, bathtub, shower rooms, and facilities designed for use by persons with disabilities shall comply with ADA/ABA-AG.
- (3) Grab bars configured to meet ADA/ABA-AG shall be provided in all resident bathtubs and showers. Grab bars configured to meet ADA/ABA-AG shall be provided at the side of each resident toilet facility.
- (4) Bars, including those which are an integral part of soap dishes, towel bars, and other fixtures shall be anchored to sustain a concentrated load of 250 pounds.
- (5) There shall be one toilet and lavatory on each floor for each six occupants not otherwise served by toilet and lavatory in the resident rooms. A large type I assisted living facility shall have separate and additional toilet and bathing facilities for live-in family and staff.
- (6) There shall be at least one bathtub or shower for each 10 residents not otherwise served by bathing facilities in resident rooms. Separate and additional facilities shall be provided for live-in family and staff. In a multistory building, there shall be at least one bathtub or shower which opens from the corridor on each floor that contains resident bedrooms not otherwise served.
- (7) Each central bathroom shall have a toilet and lavatory.
- (8) Toilet and bathing facilities shall not open directly into food preparation areas.
- (9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that can be easily cleaned and sanitized.
- (10) If showers or bathtubs contain soap dishes or shelves, they shall be recessed.
- (11) Each lavatory fixture shall have a mirror, except in food preparation areas.

R432-6-105. Service Areas.

- There shall be adequate space and equipment for the following service or functions.
 - (1) Large assisted living facilities must provide the following:
 - (a) an administrator's office with equipment for keeping records and supplies;
 - (b) an employee toilet room, lockers, and lounges, in addition to and separate from those required for the public;
 - (c) a public reception or information area; and
 - (d) housekeeping closets each with a floor receptor or service sink.
 - (2) The following required spaces apply to all type I assisted living facilities:
 - (a) A secure area for administrative activities and storage for resident records;
 - (b) a medication-storage area including a locked drug cabinet;
 - (c) a closet or compartment for the staff's personal effects;
 - (d) a clean linen storage area;
 - (e) a telephone for private use by residents or visitors;
 - (f) at least one general use housekeeping closet accessible from a general corridor on each wing or each floor; and
 - (g) storage space for housekeeping equipment and supplies with a mechanical exhaust system.

R432-6-106. Linen Services.

- (1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a separate building, on or off site, or in a commercial or shared laundry.
- (2) At least one washing machine, one clothes dryer, and ironing equipment in good working order shall be available for

use by residents who wish to do their personal laundry.

R432-6-107. Signal System.

- (1) A signal system is required for the following facilities:
 - (a) a large facility;
 - (b) a facility with bedrooms on more than one floor; and
 - (c) when staff are not continuously present on the same level as any resident.
- (2) The signal system shall be designed to:
 - (a) operate from each resident's living unit, and from each bathroom or toilet room;
 - (b) transmit a visual or auditory signal or both to a centrally staffed location, or produce an auditory signal at the living unit loud enough to summon staff;
 - (c) the signal system shall be designed to turn off only at the resident calling station; and
 - (d) identify the location of the resident summoning help.

R432-6-200. Type II Facilities.

The following sections in the 200 series apply to Type II assisted living facilities.

R432-6-201. Occupancy Type.

- (1) Large assisted living facilities shall comply with I-2 International Building Code requirements and shall have, at a minimum, 6 foot wide corridors.
- (2) Small assisted living facilities shall comply with I-1, International Building Code, requirements and shall have, at a minimum, six-foot wide corridors.
- (3) Limited capacity assisted living facilities that house Type II assisted living residents shall comply with R-4, International Building Code requirements and shall either have an approved sprinkler system, or provide a staff to resident ratio of one to one on a 24-hour basis. Residents shall be housed on floors at grade level.

R432-6-202. Campus-Type Facilities.

- (1) If a campus-type facility has separate buildings, all of the buildings shall be located on the same site within 150 feet of each other.
- (2) Resident living units shall be connected to bathing facilities and common areas by enclosed temperature controlled corridors.
- (3) Recreation and dining spaces that are also utilized by residents of other licensed health care facilities within the same campus may be counted in determining common area space as long as all applicable code and space requirements are met for all licensed facilities and the shared space is accessible without the need to pass through corridors or resident care areas of another licensed facility. The shared space may not account for more than fifty percent of the total common square footage required for any one licensed facility.

R432-6-203. Resident Units.

- (1) Facility services shall be accessible from common areas without compromising resident privacy.
- (2) Resident living units shall include room areas exclusive of space for toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules as follows:
 - (a) A single occupant unit without additional living space shall be a minimum of 120 square feet.
 - (b) A double occupant unit without additional living space shall be a minimum of 200 square feet.
 - (c) A single occupant bedroom in a unit with additional living space shall be a minimum of 100 square feet.
 - (d) A double occupant bedroom in a unit with additional living space shall be a minimum of 160 square feet.
- (3) No space used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar

detached building, may be used as a resident's bedroom.

- (4) Bedrooms may not be used as a passageway to another room, bath, or toilet other than those serving the bedroom.
- (5) Each resident living unit shall open directly into a corridor or common living area, but must not open into a food preparation area.
- (6) A maximum of two residents may occupy a resident living unit.
- (7) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-204. Toilet and Bathing Facilities.

- (1) If toilet and bathrooms are shared by more than one resident, the facility shall provide individual privacy.
- (2) A minimum of fifty percent of all toilet rooms, bathrooms and shower rooms shall be designed in compliance with ADA/ABA-AG.
- (3) Public toilet rooms shall be accessible from a corridor, and shall comply with ADA/ABA-AG.
- (4) If the living unit includes a private bathroom, the bathroom shall contain a toilet and a lavatory.
- (5) If resident living units do not have a private bathroom, the facility shall provide the following:
 - (a) a toilet and lavatory for every four residents;
 - (b) a bathtub or shower for every 10 residents designed to accommodate a resident in a wheelchair and space to allow staff to assist a resident in taking a shower; and
 - (c) a bathroom with bathtub or shower, toilet and lavatory which open from a corridor on each floor of a multiple story facility.
- (6) If resident living units have private bathrooms that do not allow staff assistance, then each floor or level shall provide a bathroom equipped with a bathtub or shower, toilet, and lavatory which opens from a corridor that provides wheelchair clearances and allows for staff assistance in bathing.
- (7) Grab bars configured to meet ADA/ABA-AG shall be provided in all resident bathtubs and showers. Grab bars configured to meet ADA/ABA-AG shall be provided at the side of each resident toilet facility not designed for accessibility.
- (8) Toilet and bathing facilities may not open directly into food preparation areas.
- (9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that may be easily cleaned and sanitized.
- (10) Showers and tubs shall contain recessed soap dishes.
- (11) Each lavatory fixture shall have a mirror. Mirrors over lavatories located in food preparation areas are prohibited.
- (12) Bars, including those which are parts of soap dishes, towel bars, and other fixtures shall be anchored to a wall and withstand a concentrated load of 250 pounds.

R432-6-205. Common Areas.

- (1) The facility shall provide a common room or rooms for dining, sitting, visiting, recreation, worship, and other activities.
 - (a) If concurrent activities are planned in a common room, the room shall be arranged to promote and facilitate the activities to minimize disruption through the use of physical barriers for separation.
 - (b) Space shall be provided for storing recreational equipment and supplies.
- (2) The facility shall provide the following minimum space for recreational activities:
 - (a) in large facilities, 20 square feet per bed;
 - (b) in small facilities, 20 square feet per bed, or a minimum of 160 square feet total area whichever is greater;
 - (c) in a limited capacity facility, a minimum of 120 square feet.

(3) If a facility adds 40 square feet per bed to a bedroom area square footage requirement, or adds 80 square feet of recreation space in a separate living room within the resident living unit, the square footage requirements for common recreational space may be reduced by 20 square feet per licensed bed in large and small facilities, not to exceed a reduction of 50 percent of the total common area square footage.

(4) The facility shall provide the following space for dining activities:

(a) in large and small facilities, a minimum of 15 square feet per licensed bed;

(b) in limited capacity facilities, a minimum of 100 square feet.

(5) If a kitchen and a minimum of 30 square feet of dining area space are provided in a resident unit in a large or small facility, then the common dining area may be reduced by 15 square feet per licensed bed. The maximum reduction shall be 50 percent of the total required dining area.

(6) A separate private living room for family or informal gatherings shall be provided in a large facility as part of the common area space. The private living room shall be a minimum of 110 square feet. If all resident living units include additional living space, the facility is not required to provide a separate private living room.

(7) Corridors and public reception space may not be included in the calculation for required square footage for dining or recreation space.

(8) The facility shall provide ten square feet per bed, or a minimum area of 100 square feet, whichever is greater, for outdoor recreation activities.

R432-6-206. Resident Support Areas.

A large facility shall provide a nourishment station which contains a work counter, a refrigerator, a sink, and cabinets for storage. The station may be located in a single purpose room, dining room, or in a kitchen if staff has 24-hour access to the area.

R432-6-207. Administrative and General Service Areas.

(1) There shall be space and equipment for the administrative services as follows:

(a) in large facilities, an administrative office of sufficient size to store records and equipment;

(b) in small and limited capacity facilities, a designated area for administrative activities and record storage.

(2) Storage shall be provided for securing staff belongings as follows:

(a) In large facilities, a room shall be provided to serve as a staff lounge with staff lockers for storage. A staff toilet room shall also be provided.

(b) In small and limited care facilities, a storage area shall be identified to store staff belongings.

(3) A large facility shall provide a public reception or information area.

(4) A telephone shall be provided for private use by residents and visitors.

R432-6-208. Special Design Features.

(1) A signal system shall be provided to alert staff of a resident's need for help.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit and from each bath room or toilet room;

(b) transmit a visual and auditory signal to a 24-hour staffed location, except a limited capacity facility signal system shall produce an auditory signal to summon staff;

(c) identify the location of the resident summoning help; and

(d) allow it to be turned off only at the source of the call.

(3) Large and small facilities shall provide a thermostat control in each resident living unit. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(4) Plumbing shutoff valves shall be located on the main water supply line and at each fixture. In addition, large facilities shall provide an accessible shutoff valve on each primary hot and cold branch of the water line and shall provide a minimum of two hot and two cold water zones. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(5) Building entrances in large and small facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(6) Special units intended to accommodate residents with Alzheimers or Dementia shall comply with Section 4.2-2.2.3.2 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, which is adopted and incorporated by reference.

R432-6-209. General Standards for Details.

(1) Each resident living unit entry door shall be constructed as follows:

(a) be 36 inches wide;

(b) open inward into the resident living unit or designed so that an outward swinging door does not restrict the corridor width;

(c) be lockable, but operable from the inside by single-action lever; and

(d) be individually keyed with the key under resident control.

(2) A master key shall be available for staff.

(3) Door handles for all doors used by residents shall be of the lever type and shall meet ADA/ABA-AG requirements. Building entrances and exit doors may have panic hardware.

(4) Each door to toilet and bathing facilities shall comply with ADA/ABA-AG and the following:

(a) be equipped with hardware which permits emergency access from the outside; and

(b) open out or be double acting.

(5) Handrails meeting the profile and gripability requirements of ADA/ABA-AG shall be provided on both sides of all resident corridors. Handrail color shall contrast that of the wall it is mounted on.

R432-6-210. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a building on or off-site, or in a commercial or shared laundry.

(2) If laundry is done off the site, the following shall be provided:

(a) a room for receiving and holding soiled linen until ready for pickup or processing;

(b) a central, clean linen storage room(s); and

(c) a lavatory in each area where unbagged, soiled linen is handled.

(3) If a large or small facility processes its own laundry on-site, the following shall be provided:

(a) a laundry room for receiving, holding, washing, drying, and sorting soiled linens, with the following:

(i) a pre-wash sink at least 13 inches deep by 20 inches wide;

(ii) a separate hand washing sink;

(iii) washer(s) and dryer(s); and

- (iv) storage for laundry supplies;
- (b) arrangement of equipment that will permit an orderly workflow and minimize cross-traffic that might mix clean and soiled operations; and
- (c) a central, clean linen storage room(s);
- (4) If a limited capacity facility processes its own laundry on-site, the following shall be provided:
 - (a) a room to store and process both clean and soiled linen;
 - (b) a washer and dryer; and
 - (c) a utility sink in the laundry room.
- (5) Each facility shall provide a minimum of one washing machine, one clothes dryer, and ironing equipment in good working order for resident use.

KEY: health care facilities**February 21, 2012****Notice of Continuation August 12, 2013****26-21-5****26-21-16**

R512. Human Services, Child and Family Services.
R512-309. Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care.

R512-309-1. Purpose and Authority.

(1) The purpose of this rule is to establish parameters and a process in which Child and Family Services may, within amounts appropriated for this specific purpose, reimburse a foster parent for providing owner's or operator's security covering a youth in foster care's operation of a vehicle if the youth is in the legal custody of Child and Family Services.

(2) Section 62A-4a-121 provides Child and Family Services the authority to provide reimbursement to a foster parent who is willing to provide motor vehicle insurance for a youth in their care to operate a motor vehicle.

(3) This rule is authorized by Section 62A-4a-102.

R512-309-2. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "Foster parent" means a licensed resource family, also known as a licensed foster family, and may also include a licensed kinship provider. Foster parent does not include a group home or residential facility that provides Out-of-Home Services under contract with Child and Family Services.

(c) "Guardianship" has the same meaning as defined in Section 78A-6-105.

(d) "Minor" has the same meaning as defined in Section 53-3-211.

(e) "Owner's or operator's security" is described in Section 41-12a-301.

R512-309-3. Eligibility Requirements.

(1) The child has been placed in the home of a foster parent who is receiving a foster care maintenance payment from Child and Family Services.

(2) Obtaining a driver's license is an objective of the Child and Family Plan that has been developed for the youth with Transition to Adult Living Services.

(3) The foster parent is willing to assume the responsibility for signing as the responsible adult for a youth in foster care to receive a driver's license under Section 53-3-211.

(a) The foster parent is willing to provide the minimum insurance coverage for the youth as described in Section 31A-22-304.

(b) The foster parent will sign a liability waiver in case they do not sustain the automobile insurance.

(c) The foster parent will ensure that the vehicle in which they have insured the youth is in good operating condition.

(4) The foster parent has full knowledge that by signing to be that responsible adult, the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon the highway as provided under Subsections 53-3-211(2) and (4).

(a) The foster parent's liability may not exceed the greater of the minimum liability insurance policy limits established under 31A-22-304 or the policy limits of the foster parent's liability insurance policy issued in accordance with Section 31A-22-302 that were in effect at the time damages were caused by the minor's operation of a motor vehicle.

(5) The foster parent who signs the application of a minor for a provisional license must certify that the minor applicant, under the authority of a permit issued, has completed at least 40 hours driving in a motor vehicle, of which at least 10 hours shall be during night hours after sunset.

R512-309-4. Method for Determining Amount of

Reimbursement for a Foster Parent.

(1) In accordance with 62A-4a-121, Child and Family Services may reimburse a foster parent for providing owner's or operator's security covering a youth's operation of a motor vehicle in amounts required under Section 31A-22-304 if the youth is in the legal custody of Child and Family Services. Reimbursement will be limited to the minimum liability insurance policy limits established under 31A-22-304.

(a) As allowed within the amounts appropriated to Child and Family Services for this purpose, Child and Family Services will reimburse the additional cost of the insurance premium for a youth when the foster parent has met the eligibility requirements.

(i) The foster parent will submit to Child and Family Services a current and valid statement from the insurance company that will identify the actual cost of providing insurance coverage for the youth in foster care.

R512-309-5. Child and Family Services Responsibility to Foster Parent.

(1) Child and Family Services will notify the Driver License Division of a request that the permit or license of the youth be cancelled when a person who has signed the application makes a written request to Child and Family Services that the permit or license of a youth in foster care be cancelled.

(2) Child and Family Services will verify to the foster parent upon cancellation of the permit or license for the youth that they are relieved from liability for that youth operating a motor vehicle subsequent to the cancellation.

KEY: child welfare, foster care

January 21, 2009

Notice of Continuation August 15, 2013

31A-22-302

31A-22-304

41-12a-301

62A-4a-121

62A-4a-102

53-3-211

78A-6-105

R539. Human Services, Services for People with Disabilities.**R539-15. Time-Limited Respite Care Program.****R539-15-1. Purpose and Authority.**

- (1) The purpose of this rule is to provide:
 - (a) procedures and standards for the determination of eligibility for the Division's Time-Limited Respite Care Program for Persons on the Division's Waiting List as specified in R539-2-4.
- (2) This rule is authorized from July 1, 2008 to June 30, 2009 by Legislative appropriation and established under Section 62A-5-103.

R539-15-2. Definitions.

- (1) Terms used in this rule are defined in Section 62A-5-101, and
- (2) "Person": Individual who meets eligibility requirements in Rule R539-1.
- (3) "Active Status": Has a current Needs Assessment Score on the Division wait list.
- (4) "Respite": A service to give relief to the Person's primary caregiver.

R539-15-3. Eligibility.

- (1) A Person is eligible for the Time-Limited Respite Care Program who meets the eligibility requirements listed in Rule 539-1, provided that:
 - (2) the Person is not receiving ongoing services with the Division,
 - (3) the Person is currently in active status on the Division waiting list.

R539-15-4. Limitations.

- (1) A Person who meets eligibility requirements for the Time-Limited Respite Care Program is limited to no more than \$1,000 for respite care services from July 1, 2008 to June 30, 2009.
- (2) Funds are granted for 12 months. After six months, the Person must report the expenditure of funds to the Division. The use of the respite care funds will be evaluated by the Division. If there is no plan to use the funds or funds are unused, those funds may be reallocated to another eligible Person.
- (3) Persons receiving ongoing services are not eligible for time-limited respite services.

R539-15-5. Priority.

- (1) As of July 1, 2008, the first 250 persons who are not brought into ongoing services and who remain on the Division waiting list will receive priority for respite care services. If any of the first 250 choose not to use time-limited respite care services, then Persons will be offered this service in the order of their position on the waiting list.

R539-15-6. Respite Care Services Providers.

- (1) Respite services may be provided by an employee of the Person or through an agency or program that provides respite care services.
- (2) If the Person elects to hire an employee, Division requirements for a background check must be met.
- (3) Payments to an employee must be made through a fiscal agent.

KEY: disabilities**August 21, 2008****Notice of Continuation August 13, 2013****62A-5-103**

R590. Insurance, Administration.**R590-160. Administrative Proceedings.****R590-160-1. Authority.**

This rule is promulgated by the Insurance Commissioner under the general authority granted under Subsection 31A-2-201(3)(a), and, Subsection 63G-4-102(6), Subsection 63G-4-203(1) and other applicable sections of Chapter 4 of Title 63G providing for rules governing adjudicative proceedings.

R590-160-2. Purpose and Scope.

1(a) Purpose: This rule establishes procedures governing the designation and conduct of adjudicative proceedings before the insurance commissioner or the commissioner's designee.

(b) Public hearings under Section 63G-3-302 are not covered by this rule.

(2) Scope: This rule applies to all licensees and non-licensees involved in the business of insurance in Utah.

R590-160-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions as set forth in Section 63G-4-103 and the following:

(1) "Complainant" is the Utah Insurance Department in all actions against a licensee or other person who has been alleged to have committed any act or omission in violation of the Utah Insurance Code or Rules, or order of the commissioner.

(2) "Department Representative" means the person who will represent the interests of the Utah Insurance Department, including its attorney, in any administrative action before the commissioner.

(3) "Existing Disability" means any suspension, revocation or limitation of a license or certificate of authority or any limitation on a right to apply to the department for a license or certificate of authority.

(4) "Intervenor" means a person permitted to intervene in a proceeding before the commissioner.

(5) "Petitioner" is a person seeking agency action.

(6) "Staff" means the Insurance Department staff. The staff shall have the same rights as a party to the proceedings.

R590-160-4. Designations of Proceedings.

(1) All actions pursuant to initial determinations upon applications for a license or a certificate of authority, or any petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, are designated as informal adjudicative proceedings.

(2) A proceeding may be commenced as an informal proceeding by the department when it appears to the department that no disputed issues may exist or in matters of technical or minor violation of the code or rules.

(3) Any proceeding may be converted from a formal proceeding to an informal proceeding or from an informal proceeding to a formal proceeding upon motion of a party or sua sponte by the presiding officer, subject to the provisions of Subsection 63G-4-202(3).

R590-160-5. Rules Applicable to All Proceedings.

(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.

(2) Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as compliance is found to be impracticable or unnecessary or for other good cause.

(3) Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

(4) Parties.

(a) Parties to a proceeding before the commissioner may be:

(i) Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.

(ii) Any person may become an intervening party when it is established to the satisfaction of the commissioner or presiding officer that the person has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;

(iii) The Insurance Department staff;

(iv) Other persons permitted by the commissioner or presiding officer.

(b) Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "intervenor", according to the nature of the proceeding and the relation of the parties thereto.

(5) Appearances and Representation.

(a) Making an Appearance. A party enters an appearance by filing an initial pleading or an initial response to a notice of agency action at the beginning of the proceeding, giving the party's name, address, telephone number, and stating the party's position or interest in the proceeding.

(b)(i) Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership, and a member or manager may represent a limited liability company.

(ii) An attorney licensed to practice in another jurisdiction in the United States may apply to appear pro hac vice to represent any party in a particular matter by filing a Motion to Appear Pro Hac Vice. A Motion to Appear Pro Hac Vice shall be served on all parties and shall contain:

(A) the name, address, telephone number, fax number, email address, bar identification number(s), and state(s) of admission of the applicant;

(B) the name and number of the case in which the applicant is seeking to appear as the attorney of record or, if the case has not yet been filed, a description of the parties;

(C) a statement whether, in any state, the applicant is currently suspended or disbarred from the practice of law, or has been disciplined within the prior five years, or is the subject of any pending disciplinary proceeding;

(D) the name, address, Bar identification number, telephone number, fax number and email address of a member of the Utah State Bar to serve as associate counsel; and

(E) attach a Certificate of Good Standing from the licensing state in which the applicant resides.

(iii) The presiding officer may issue an order allowing the applicant to appear Pro Hac Vice if it appears that the applicant is qualified and allowing the appearance would be in the interest of justice. The order allowing the applicant to appear may be revoked at any time if the attorney fails to comply with any order or direction of the presiding officer or engages in conduct contrary to the Rules of Professional Conduct. The presiding officer may require Utah counsel to appear at all hearings.

(c) An attorney or other authorized representative authorized in Subsection R590-160-5(5)(b) above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear.

(d) Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in

opposition to any cause, or solely to discover and present facts pertinent to the issue.

(6) Pleadings.

(a) Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a proceeding.

(b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.

(c) Title. Pleadings before the commissioner shall be titled in substantially the following form:

(i) Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

(ii) Left side, identification of parties: (COMPLAINANT:, RESPONDENT:, PETITIONER:, etc.);

(iii) Right side, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);

(iv) Right side, docket number.

(d) Size and Content of Pleadings. Pleadings shall be typewritten, double-spaced on white 8-1/2 x 11-inch paper. They must identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

(e) Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of Civil Procedure.

(f) Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, telephone number, and email address, if available. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.

(g) Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene shall be styled "petitions."

(h) Motions.

(i) No proceeding before the commissioner may be initiated by a motion except in the case of a Motion for an Order to Show Cause.

(ii) Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

(iii) Any motion shall be filed at least ten days prior to the date set for the hearing.

(7) Filing and Service.

(a) A document shall be deemed filed on the date it is delivered to and stamped received by the department.

(b) An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.

(c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the mailing address or other address on file with the department.

(d) There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially the following form: I do hereby certify that on (date), I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).

(e) When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

(8) Presiding Officers - Disqualification for Bias.

(a) Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.

(b) The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive any additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of an appeal of a final agency action.

(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or this rule.

(ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

(c) A presiding officer may at any time voluntarily disqualify himself or herself.

(9) Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer involved in a hearing shall not have ex parte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.

(10) Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.

R590-160-6. Rules Applicable to Formal Proceedings.

Hearings.

(1) Conduct of Hearing. All hearings shall be conducted pursuant to the provisions of Section 63G-4-206.

(2) Continuance. If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.

(3) Public Hearings. Unless ordered by the presiding officer for good cause, all hearings shall be open to the public.

(4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. Telephonic testimony shall be taken under conditions that permit all parties to hear the testimony and examine or cross-examine the witness. It shall be within the discretion of the presiding officer as to whether or not telephonic testimony shall be allowed.

(5) Record of Hearing.

(a) Transcript of Hearing. Upon two days' notice, any party may request that, at the party's own expense, a certified shorthand reporter be used to record the proceedings. If such a transcript is made, the original transcript of the proceeding shall be filed with the commissioner at no cost to the commissioner. Parties wanting a copy of the certified shorthand reporter's transcript may purchase it from the reporter at the parties' own expense.

(b) Recording Device. Unless otherwise ordered, the record of the proceedings shall be made by means of a tape recorder or other recording device. A duplicate copy of the tape, or other recording, will be provided by the commissioner at the request and expense of any party, providing that a copy of any transcription of any portion of the record is simultaneously provided at no cost to the commissioner. Transcriptions shall be done by a certified shorthand reporter.

(6) Subpoenas and Fees.

(a) Subpoenas. On the motion of the commissioner or the presiding officer, or at the request of any party for the production of evidence or the attendance of any person in a formal adjudicative proceeding, the commissioner or the presiding officer may issue a subpoena. Any subpoena so issued shall be served in accordance with the Utah Rules of Civil Procedure or by a person designated by the commissioner.

(b) Witness Fees. Each witness, other than department staff, who appears before the commissioner or the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the commissioner shall be entitled to payment from the funds appropriated for the use of the Insurance Department. Any witness subpoenaed at the request of a party other than the commissioner may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

(7) Discovery. Discovery may be had as the parties may agree or pursuant to an order of the presiding officer.

(8) At the close of the formal hearing, the presiding officer shall issue an order based upon evidence presented in the hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

R590-160-7. Rules Applicable to Informal Proceedings.

(1) An informal proceeding may be commenced by the department by issuing a Notice of Informal Proceeding and Order in cases when it appears to the department that no disputed issues exist or in matters of technical or minor violation of the code. The Order shall be based upon the information contained in the files of the department, or known to the commissioner, and shall constitute a "proposed order" that shall become final 15 days after delivery or mailing to the respondent unless a written request for a hearing is received in the offices of the department prior to the expiration of 15 days.

(2) Failure to request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.

(3) When a hearing is requested in an informal adjudicative proceeding, including a request for a hearing upon the denial of an application for a license or certificate of authority, or a petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, a Notice of Hearing shall be issued stating the matters to be decided and giving notice of the date, time and place of an informal hearing to be held.

(4) An informal hearing shall not be of record. At an informal hearing, the presiding officer may receive testimony, proffers of evidence, affidavits and arguments relating to the issues to be decided and may issue subpoenas requiring the

attendance of witnesses or the production of necessary evidence.

(5) At the close of the informal hearing, the presiding officer shall issue an order based upon evidence in the department files and the evidence or proffers of evidence received at the informal hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

R590-160-8. Agency Review.

(1) Agency review of an administrative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to subsection 7(2), shall be available to any party to such administrative proceeding by filing a petition for review with the commissioner within 30 days of the date the order is issued in that proceeding. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Petitions for Review shall be filed in accordance with Section 63G-4-301.

(3) Review shall be conducted by the commissioner or a person or persons designated by the commissioner, including members of department staff. If the review is conducted by other than the commissioner, the persons conducting the review shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b). The request for agency review shall include a copy of the order, which is the subject of the request.

(b)(i) A party requesting agency review shall set forth any factual or legal basis in support of that request; and

(ii) may include supporting arguments and citation to appropriate legal authority; and

(A) to the relevant portions of the record developed during the adjudicative proceeding if the administrative proceeding being reviewed is a formal proceeding; or

(B) to the relevant portions of the department's files if the administrative proceeding being reviewed is an informal proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is a formal proceeding; or

(ii) based on the department's files, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is an informal proceeding.

(d) A party challenging a legal conclusion must support its argument with citation to any relevant authority and also:

(i) cite to those portions of the record which are relevant to that issue if the administrative proceeding being reviewed is a formal proceeding; or

(ii) cite to those parts of the department's files which are relevant to that issue if the administrative proceeding being reviewed is an informal proceeding.

(e)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the record relevant to such finding or conclusion to be prepared if the administrative proceeding being reviewed is a formal proceeding. R590-160-6.5(b) shall govern as to acquisition of hearing tapes for preparation of such transcript; or

(B) reference in its request for agency review that no transcript or hearing tapes are available if the administrative proceeding being reviewed is an informal proceeding.

(ii) When a request for agency review is filed under the

circumstances set forth under R590-160-8(4)(e)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the commissioner when the transcript will be available for filing with the department.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The commissioner may waive the requirement of preparation of a written transcript and permit citation to the electronic tape recording of such administrative proceeding upon appropriate motion and a showing of reasonableness where such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(5) Request of Stay.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) The department may oppose the request for a stay in writing within 10 days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the commissioner shall review the request and any opposing memorandum, and the findings of fact, conclusions of law and order and determine whether a stay is in the best interest of the public. If the commissioner determines it is in the best interest of the public to issue a stay, the commissioner may:

(i) issue a stay, staying all or any part of the order pending agency review, or

(ii) issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(d) The commissioner may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

(a) The commissioner may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the commissioner or the commissioner's designee.

(b)(i) When no transcript is available or if available has been deemed unnecessary and waived by the commissioner in accordance with R590-160-8(4)(e)(iv) to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request.

(ii) If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response in opposition to a request for agency review and any memoranda supporting that response:

(i) shall be filed no later than 15 days from the filing of the request for agency review when no transcript is available or necessary to conduct agency review; or

(ii) shall be filed no later than 15 days from the filing of any subsequent memoranda supporting the request for agency review if a transcript is necessary to conduct agency review.

(d) Any final reply memoranda in support of the request for agency review shall be filed no later than 5 days after the filing of a response to the request for agency review and any memoranda supporting that response.

(7) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The commissioner may order or permit oral argument if the commissioner determines such argument is warranted to assist in conducting agency review.

(8) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative

proceedings, as set forth in Subsection 63G-4-403(4).

(9) Order on Review.

(a) The order on review shall comply with the requirements of Subsection 63G-4-301(6).

(b) An Order on Review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further proceedings or hearing.

R590-160-9. Sanctions.

In the course of any proceeding the commissioner or presiding officer may, by order, impose sanctions upon any party, parties, or their counsel for contemptuous conduct in the hearing or for failure to comply with this rule or any lawful order of the presiding officer or the commissioner. Sanctions may include deferral or acceleration of proceedings, exclusion of persons who cause disturbance of the proceeding, or imposition of special conditions upon further participation, including levy and payment of any forfeiture, special costs or expenses incurred by the commissioner or by a party as a result of noncompliance with this rule or lawful orders that were necessary to effective conduct of a proceeding. In case of persistent and intentional disregard of or noncompliance with this rule, rulings, or orders, sanctions may include resolution of designated issues against the position asserted by the offending party where the contemptuous conduct or noncompliance is found to have interfered with effective development of evidence bearing on those issues. If the conduct is by a representative of a party, sanctions may include the exclusion of that representative from matters before the commissioner.

R590-160-10. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule on the effective date of the rule

R590-160-11. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

KEY: insurance

August 28, 2013

Notice of Continuation October 30, 2008

31A-2-201

63G-4-102

63G-4-203

R590. Insurance Administration.**R590-246. Professional Employer Organization (PEO) License Application Rule.****R590-246-1. Authority.**

This rule is promulgated pursuant to the general rulemaking authority granted the insurance commissioner by Subsection 31A-2-201(3)(a) and the specific authority granted by Sections 31A-40-103 and 31A-40-302 through 31A-40-306.

R590-246-2. Purpose and Scope.

(1) The purpose of this rule is to establish:

- (a) a licensing process;
- (b) license application forms; and

(c) other requirements which the commissioner deems necessary for the regulation of professional employer organizations.

(2) This rule applies to all professional employer organization license applicants, all licensed professional employer organizations, and any unlicensed person doing the business of a professional employer organization in Utah.

R590-246-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-40-102 apply to this rule.

(2) "Fully insured" as used in 31A-40-208 means a health benefit plan for which 100% of the liability has been assumed by an insurance company or health maintenance organization authorized to conduct business in Utah.

(a) The health benefit plan may include a layer of financial responsibility for claims assumed by the PEO as long as the insurance company or health maintenance organization is responsible for 100% of the PEO's liability in the event of non-payment by the PEO.

(b) The covered individual must be entitled to make a claim for payment directly to the insurance company or health maintenance organization.

(c) A fully insured plan may have co-pay or deductible requirements as required by contract.

R590-246-4. Initial and Renewal Licensing Process.

(1) All professional employer organization types must comply with the appropriate statutory requirements and complete and submit the appropriate initial or renewal license application form and any supporting documents to the commissioner.

(2) The initial or renewal application form, and all attachments must be submitted electronically via:

(a) a PDF attachment to an email - the preferred method; or

(b) an electronic facsimile.

(3) Renewal applications are due September 30th of each year.

(4)(a) Pay the initial license fee by check submitted to the address shown at the bottom of the last page of the application form at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html. Checks not drawn on the professional employer organization must be referenced to the organization.

(b) Pay renewal fees in accordance with the instructions issued with the renewal invoice.

(5) A professional employer organization applicant that was not registered with the Division of Professional Licensing, Utah Department of Commerce prior to May 4, 2008, is a new applicant and must:

(a) submit a new application;

(b) pay the license fee by check submitted to the address on the Department's webpage at www.insurance.gov. Checks not drawn on the Professional Employer Organization must be referenced to the organization.

(6) Professional employer types for initial and renewal licenses:

(a) Professional Employer Organization - Not CERTIFIED Through An Assurance Organization.

(i) Comply with the requirements in Sections 31A-40-205, 31A-40-302 and 31A-40-305.

(ii) Complete the Professional Employer Organization - Not Certified Through An Assurance Organization license application form posted on the Department's webpage at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html.

(iii) The requirement in 31A-40-302(2)(g) will be satisfied by completing and submitting the UCAA Biographical Affidavit form posted on the Department's webpage at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html.

(b) Professional Employer Organization - CERTIFIED Through An Assurance Organization.

(i) Comply with the requirements in Section 31A-40-303.

(ii) Complete the Professional Employer Organization - Certified Through An Assurance Organization license application form posted on the Department's webpage at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html.

(c) Professional Employer Organization - Small Operation License.

(i) Comply with the requirements in Section 31A-40-304.

(ii) Complete the Professional Employer Organization - Small Operation License application form posted on the Department's webpage at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html.

(d) Professional Employer Organization Group.

(i) Comply with the requirements in Section 31A-4-306.

(ii) Complete the appropriate Professional Employer Organization license application:

(A) Professional Employer Organization - Not Certified Through An Assurance Organization;

(B) Professional Employer Organization - Certified Through An Assurance Organization; or

(C) Professional Employer Organization - Small Operation License.

R590-246-5. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-246-6. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons and circumstances are not effected.

KEY: professional employer organization licensing

June 27, 2011 31A-2-201

Notice of Continuation August 9, 2013 31A-40-103

31A-40-302

31A-40-304

R590. Insurance, Administration.**R590-250. PEO Assurance Organization Designation.****R590-250-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-40-303(2) wherein the commissioner is given authority to designate by rule one or more assurance organizations for certifying the qualifications of a professional employer organization.

R590-250-2. Purpose and Scope.

(1) The purpose of this rule is to establish a process by which an assurance organization can be designated for certifying the qualifications of a professional provider organization.

(2) This rule applies to any assurance organization certifying the qualifications of a professional employer organization with operations in Utah.

R590-250-3. Designation Process.

(1) An assurance organization desiring to be designated by the commissioner to certify professional employer organizations in Utah shall:

(a) apply by letter requesting designation by the commissioner;

(b) include in the letter or as an attachment to the letter:

(i) an explanation of how the assurance organization will certify each of the qualification criteria listed in Section 31A-40-303 (3); and

(ii) evidence that the assurance organization is licensed by one or more states to certify the qualifications of a professional employer organization.

(2) The commissioner will designate approved assurance organizations by rule.

R590-250-4. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-250-5. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons and circumstances are not affected.

KEY: insurance, assurance organization designation
August 25, 2008 **31A-40-303(3)**
Notice of Continuation August 9, 2013

R590. Insurance, Administration.**R590-251. Preneed Life Insurance Minimum Standards For Determining Reserve Liabilities And Nonforfeiture Values Rule.****R590-251-1. Authority.**

This rule is promulgated by the commissioner of insurance pursuant to Subsections 31A-2-201(3), 31A-17-402(1), and 31A-22-408(11).

R590-251-2. Purpose and Scope.

(1) The purposes of this rule for preneed life insurance products are to:

- (a) establish minimum mortality standards for reserves and non-forfeiture values; and
- (b) require the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Table for use in determining:
 - (i) reserve liabilities; and
 - (ii) nonforfeiture values.

(2) This rule applies to preneed insurance contracts, as defined in Section R590-251-3, and to similar policies and certificates as determined by the commissioner.

R590-251-3. Definitions.

In addition to the definitions in 31A-1-301 the following definitions shall apply for the purposes of this rule.

(1)(a) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002.

(b) The 2001 CSO Mortality Table is included in the Proceedings of the NAIC, 2nd Quarter 2002.

(c) Unless the context indicates otherwise, the 2001 CSO Mortality Table includes:

- (i) the ultimate form of that table;
- (ii) the select and ultimate form of that table;
- (iii) the smoker and nonsmoker mortality tables; and
- (iv) the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

(2) "Ultimate 1980 CSO" means the Commissioners' 1980 Standard Ordinary Life Valuation Mortality Tables (1980 CSO) without ten-year (10-year) selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983.

(3) Preneed insurance contract means any life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured.

(a) Goods and services may include, but are not limited to embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone, and transportation of the deceased.

(b) The status of the policy or contract as preneed insurance is determined at the time of issue in accordance with the policy form filing.

(4) The tables identified in Subsections R590-251-3(1) and R590-251-3(2) are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

R590-251-4. Minimum Standards.

This section sets minimum standards for determining reserve liabilities and nonforfeiture values for policies subject to the rule.

(1) Mortality. The mortality used in determining the minimum standard for valuation and the minimum standard for nonforfeiture values for both male and female insureds shall be the Ultimate 1980 CSO.

(2) Interest rates.

(a) The interest rates used in determining the minimum standard for valuation shall be the calendar year statutory valuation interest rates as defined in 31A-17-506.

(b) The interest rates used in determining the minimum standard for nonforfeiture values shall be the calendar year statutory nonforfeiture interest rates as defined in 31A-22-408.

(3) Methods.

(a) The method used in determining the minimum standard for valuation shall be the method defined in 31A-17, Part 5, Standard Valuation Law.

(b) The method used in determining the minimum standard for nonforfeiture values shall be the method defined in 31A-22-408.

R590-251-5. Transition Rules.

(1) For policies subject to this rule issued before January 1, 2012, the 2001 CSO may be used as the minimum mortality standard for valuation and minimum mortality standard for nonforfeiture values for both male and female insureds.

(2) If an insurer elects to use the 2001 CSO as a minimum mortality standard for any policy subject to this rule issued before January 1, 2012, the insurer shall provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

(a) A complete list of all policy forms that use the 2001 CSO as a minimum mortality standard;

(b) A certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserve liabilities for the policies subject to this rule and using the 2001 CSO as a minimum mortality standard, develops adequate reserves; and

(c) Supporting information regarding the adequacy of reserves for policies subject to this rule and using the 2001 CSO as a minimum mortality standard for reserve liabilities.

(3) For the purpose of the certification required under Subsection R590-251-5(2)(b), the policies subject to this rule and using the 2001 CSO as a minimum mortality standard cannot be aggregated with any other policies.

(4) Policies subject to this rule issued on or after January 1, 2012, must use the Ultimate 1980 CSO in the calculation of minimum reserve liabilities and minimum nonforfeiture values.

R590-251-6. Effective Date.

This rule applies to policies issued on or after January 1, 2009.

R590-251-7. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-251-8. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-251-9. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons and circumstances are not affected.

**KEY: preneed life insurance standards
August 25, 2008**

31A-2-201

Notice of Continuation August 9, 2013

31A-17-402
31A-22-408

R622. Lieutenant Governor, Administration.**R622-1. Adjudicative Proceedings.****R622-1-1. Purpose.**

A. This rule provides the informal adjudicative procedures for submission, review, and disposition of petitions for agency declaratory rulings on the applicability of statutes, rules, and orders governing or issued by the agency governing:

1. Appeal and review of a decision by the Lieutenant Governor's Office regarding elections, certifications, lobby licensing, filing of documents.

B. The informal procedures of this rule apply to all other agency actions for which an adjudicative proceeding may be required.

R622-1-2. Authority.

This rule is required by Chapter 4 of Title 63G, the Utah Administrative Procedures Act, and is enacted under the authority of Chapter 3 of Title 63G, the Utah Administrative Rulemaking Act.

R622-1-3. Definitions.

A. The terms used in this rule are defined in Section 63G-4-103, except "agency" means Office of the Lieutenant Governor.

B. In addition:

1. "order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, not a class of persons;

2. "declaratory ruling" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule, or order; and

3. "applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts.

R622-1-4. Petition Procedure.

A. Any person or agency may petition for a declaratory ruling.

B. The petition shall be addressed and delivered to the head of the agency.

C. The agency shall stamp the petition with the date of receipt.

R622-1-5. Petition Form.

The petition shall:

1. be clearly designated as a request for an agency declaratory ruling;

2. identify the statute, rule, or order to be reviewed;

3. describe in detail the situation or circumstances in which applicability is to be reviewed;

4. describe the reason or need for the applicability review;

5. include an address and telephone where the petitioner can be reached during regular work days; and

6. be signed by the petitioner.

R622-1-6. Petition Review and Disposition.

A. Petition Review

The agency head or designee shall promptly review and consider the petition and may:

1. meet with the petitioner;

2. hold a public hearing on the petition;

3. consult with counsel or the Attorney General; or

4. take any action, consistent with law, that the agency, in its judgment, deems necessary to provide the petition adequate review and due consideration.

B. Decision of Agency

The agency shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner a copy of the

ruling by certified mail, or shall send the petitioner notice of progress in preparing the ruling, within 30 days of receipt of the petition.

C. Filing of Ruling

The agency shall retain the petition and a copy of the declaratory ruling in its records.

R622-1-7. Nature of Proceeding.

A. Any proceeding conducted by the agency shall be conducted as an informal adjudicative proceeding, as provided for in Section 63-46b-4-5. The agency head shall designate the presiding officer of the adjudicative proceeding and shall disclose that designation in the notice of adjudicative proceeding.

B. Notice

Not less than 20 days prior to any proposed agency action, the agency shall file and serve notice of the adjudicative proceeding upon the affected party, which notice shall be in writing, shall designate the presiding officer, shall be signed by the agency head and otherwise shall be prepared in accordance with the requirements of Section 63G-4-201.

C. Procedure

1. No hearing shall be held unless the affected party requests a hearing in writing not more than ten days after the service of the notice of adjudicative proceeding.

2. If a hearing is requested by the affected party, affected party shall be permitted to testify, present evidence and comment on the proposed agency action. Prior to the hearing, the affected party shall have access to information contained in the agency's files relevant to the adjudicative proceeding but discovery is prohibited and the agency may not issue subpoenas or other discovery orders.

3. All informal adjudicative proceedings shall be open to all parties.

KEY: administrative procedures, enforcement (administrative)

**1988
Notice of Continuation August 9, 2013**

**63-46b-1 et al.
67-1a-1 et al.**

R657. Natural Resources, Wildlife Resources.**R657-19. Taking Nongame Mammals.****R657-19-1. Purpose and Authority.**

(1) Under authority of Sections 23-13-3, 23-14-18 and 23-14-19, this rule provides the standards and requirements for taking and possessing nongame mammals.

(2) A person capturing any live nongame mammal for a personal, scientific, educational, or commercial use must comply with R657-3 Collection, Importation, Transportation and Subsequent Possession of Zoological Animals.

R657-19-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Immediate family" means the landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(b) "Nongame mammal" means:

(i) any species of bats;

(ii) any species of mice, rats, or voles of the families Heteromyidae, Cricetidae, or Zapodidae;

(iii) opossum of the family Didelphidae;

(iv) pikas of the family Ochotonidae;

(v) porcupine of the family Erethizontidae;

(vi) shrews of the family Soricidae; and

(vii) squirrels, prairie dogs, and marmots of the family Sciuridae.

R657-19-3. General Provisions.

(1) A person may not purchase or sell any nongame mammal or its parts.

(2)(a) The live capture of any nongame mammals is prohibited under this rule.

(b) The live capture of nongame mammals species may be allowed as authorized under Rule R657-3.

(3) Section 23-20-8 does not apply to the taking of nongame mammal species covered under this rule.

R657-19-4. Nongame Mammal Species - Certificate of Registration Required.

(1) A certificate of registration is required to take any of the following species of nongame mammals:

(a) bats of any species; and

(b) pika - *Ochotona princeps*.

(2) A certificate of registration is required to take any shrew - Soricidae, all species.

(3) A certificate of registration is required to take a Utah prairie dog, *Cynomys parvidens*, as provided in Sections R657-19-6, R657-19-7, R657-19-8 and R657-19-9.

(4) A certificate of registration is required to take any of the following species of nongame mammals in Washington County:

(a) cactus mouse - *Peromyscus eremicus*;

(b) kangaroo rats - *Dipodomys*, all species;

(c) Southern grasshopper mouse - *Onychomys torridus*; and

(d) Virgin River montane vole - *Microtus montanus rivularis*, which occurs along stream-side riparian corridors of the Virgin River.

(5) A certificate of registration is required to take any of the following species of nongame mammals in San Juan and Grand counties:

(a) Abert squirrel - *Sciurus aberti*;

(b) Northern rock mouse - *Peromyscus nasutus*; and

(c) spotted ground squirrel - *Spermophilus spilosoma*.

(6) The division may deny a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of:

(i) Title 23 of the Utah Code;

(ii) Title R657 of the Utah Administrative Code;

(iii) a certificate of registration;

(iv) an order of the Wildlife Board; or

(v) any other law that bears a reasonable relationship to the applicant's ability to safely and responsibly perform the activities that would be authorized by the certificate of registration;

(b) the applicant misrepresents or fails to disclose material information required in connection with the application;

(c) taking the nongame mammal as proposed in the application violates any federal, state or local law;

(d) the application is incomplete or fails to meet the issuance criteria set forth in this rule; or

(e) the division determines the activities sought in the application may significantly damage or are not in the interest of wildlife, wildlife habitat, serving the public, or public safety.

R657-19-5. Nongame Mammal Species - Certificate of Registration Not Required.

(1) All nongame mammal species not listed in Section R657-19-4 as requiring a certificate of registration, may be taken:

(a) without a certificate of registration;

(b) year-round, 24-hours-a-day; and

(c) without bag or possession limits.

(2) A certificate of registration is not required to take any of the following species of nongame mammals, however, the taking is subject to the provisions provided under Section R657-19-10:

(a) White-tailed prairie dog, *Cynomys leucurus*; and

(b) Gunnison prairie dog, *Cynomys gunnisoni*.

R657-19-6. Utah Prairie Dog Provisions.

(1)(a) A person may not take a Utah Prairie dog, *Cynomys parvidens*, without first obtaining a certificate of registration from the division.

(b) A certificate of registration for taking Utah prairie dogs may be issued as provided in Subsection (i) or Subsection (ii), or Subsection (iii), if the taking will not further endanger the existence of the species:

(i) in cases where Utah Prairie dogs are causing damage to agricultural lands as provided in the rules of the U.S. Fish and Wildlife Service; or

(ii) as provided in a valid Incidental Take permit issued by the U.S. Fish and Wildlife Service under an approved Habitat Conservation Plan; or

(iii) as provided under a valid Incidental Take permit issued by the U.S. Fish and Wildlife Service allowing take of Utah prairie dogs on specified private lands as part of an approved conservation agreement enacted between the U.S. Fish and Wildlife Service and the owner of those private lands.

(c) A person may apply for a certificate of registration at the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84720.

(d) A landowner, lessee, or their immediate family member, or an employee on a regular payroll and not hired specifically to take Utah prairie dogs, may apply for a certificate of registration.

(e)(i) A person, other than those listed in Subsection (d), may apply for a certificate of registration to take Utah prairie dogs as a designee of the landowner or lessee provided the application includes:

(A) an explanation of the need for the certificate of registration to be issued;

(B) justification for utilization of the designee; and

(C) the landowner or lessee's signature.

(ii) A maximum of two designee certificates of registration may be issued per landowner or lessee.

(iii) Each designee application shall be considered individually based upon the explanation and justification provided.

(f) An application for a certificate of registration must include:

- (i) full name;
- (ii) complete mailing address;
- (iii) phone number;
- (iv) date of birth;
- (v) weight and height;
- (vi) gender;
- (vii) color of hair and eyes;
- (viii) social security number;
- (ix) driver's license number, if issued;
- (x) proof of hunter education certification if the applicant was born after December 31, 1965; and
- (xi) the township, range, section and 1/4 section of the agricultural lands where the prairie dogs will be taken.

(g) An applicant must be at least 14 years of age at the time of application and must abide by the provisions for children being accompanied by adults while hunting with a weapon pursuant to Section 23-20-20.

(h) After review of the application, a certificate of registration may be issued.

(i) A maximum of four certificates of registration may be issued to any landowner or lessee, including those issued to the landowner or lessee's designees.

(j) A certificate of registration shall be issued on an individual basis and shall be valid only for the person to whom the certificate of registration is issued.

(k) A certificate of registration is not transferrable and must be signed by the holder prior to use.

(l) If the application and permitting process is accomplished by U.S. Mail, the certificate of registration shall only become valid after a copy of the signed certificate of registration is received by the division's southern regional office.

(2)(a) A person may take Utah prairie dogs with a firearm during daylight hours or by trapping as specified on the certificate of registration.

(b) A person may not use any chemical toxicant to take Utah prairie dogs.

(c) In addition to the requirements of this rule, any person taking Utah prairie dogs must comply with state laws, and local ordinances and laws.

(d) A person at least 14 years of age and under 16 years of age who takes Utah Prairie dogs must be accompanied by an adult with a valid certificate of registration to take Utah Prairie dogs on the same property.

R657-19-7. Areas Open to Taking Utah Prairie Dogs -- Dates Open --Limits on Number of Utah Prairie Dogs Taken.

(1) A person who obtains a valid certificate of registration may take Utah prairie dogs only on private lands within the following counties:

- (a) Beaver;
- (b) Garfield;
- (c) Iron;
- (d) Kane;
- (e) Millard;
- (f) Piute;
- (g) Sanpete;
- (h) Sevier;
- (i) Washington; and
- (j) Wayne.

(2) Taking of a Utah prairie dog on any land or by any method, other than as provided in the valid certificate of registration, including any public land, is a violation of state and

federal law.

(3) Any person, who is specifically named on a valid certificate of registration, may remove Utah prairie dogs, as provided in the certificate of registration.

(4) The taking of any Utah prairie dog outside the areas provided in this section is prohibited, except by division employees while acting in the performance of their assigned duties.

(5) The taking of Utah prairie dogs is limited to the dates designated on the certificate of registration. All dates are confined to June 1 through December 31, except as provided in Subsection R657-19-6(1)(b)(iii).

(6)(a) A person may take only the total number of Utah prairie dogs designated in the certificate of registration, except as provided in Subsection R657-19-6(1)(b)(iii).

(b) The total range-wide take of Utah prairie dogs causing agricultural damage is limited to no more than 6,000 Utah prairie dogs annually.

(c) If the division determines that taking Utah prairie dogs has an adverse effect on conservation of the species, taking shall be further restricted or prohibited.

R657-19-8. Monthly Reports of Take of Utah Prairie Dogs.

(1) The following information must be reported to the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84720, every 30 days:

- (a) the name and signature of the certificate of registration holder;
- (b) the person's certificate of registration number;
- (c) the number of Utah prairie dogs taken; and
- (d) the location, method of take, and method of disposal of each Utah prairie dog taken during the 30-day period.

(2) Failure to report the information required in Subsection (1), within 30 days, may result in the denial of future applications for a certificate of registration to take Utah prairie dogs.

R657-19-9. Unlawful Possession of Utah Prairie Dogs.

A person may not possess a Utah prairie dog or its parts, without first obtaining a valid certificate of registration and a federal permit.

R657-19-10. White-tailed and Gunnison Prairie Dogs.

(1)(a) A license or certificate of registration is not required to take either white-tailed or Gunnison prairie dogs.

(b) There are no bag limits for white-tailed or Gunnison prairie dogs for which there is an open season.

(2)(a) White-tailed prairie dogs, *Cynomys leucurus*, may be taken in the following counties from January 1 through March 31, and June 16 through December 31:

- (i) Carbon County;
- (ii) Daggett County;
- (iii) Duchesne County;
- (iv) Emery County;
- (v) Morgan;
- (vi) Rich;
- (vii) Summit County;
- (viii) Uintah County, except in the closed area as provided in Subsection (2)(b)(i);
- (ix) Weber; and
- (x) all areas west and north of the Colorado River in Grand and San Juan counties.

(b) White-tailed prairie dogs, *Cynomys leucurus*, may not be taken in the following closed area in order to protect the reintroduced population of black-footed ferrets, *Mustela nigripes*:

(i) Boundary begins at the Utah/Colorado state line and Uintah County Road 403, also known as Stanton Road, northeast of Bonanza; southwest along this road to SR 45 at

Bonanza; north along this highway to Uintah County Road 328, also known as Old Bonanza Highway; north along this road to Raven Ridge, just south of US 40; southeast along Raven Ridge to the Utah/Colorado state line; south along this state line to point of beginning.

(3) The taking of White-tailed prairie dogs, *Cynomys leucurus*, is prohibited from April 1 through June 15, except as provided in Subsection (5).

(4)(a) The taking of Gunnison prairie dogs, *Cynomys gunnisoni*, is prohibited in all areas south and east of the Colorado River, and north of the Navajo Nation in Grand and San Juan counties from April 1 through June 15.

(b) Gunnison prairie dogs may be taken in the area provided in Subsection (4)(a) from June 16 through March 31.

(5) Gunnison prairie dogs and White-tailed prairie dogs causing agricultural damage or creating a nuisance on private land may be taken at any time, including during the closed season from April 1 through June 15.

R657-19-11. Violation.

(1) Any violation of this rule is a Class C misdemeanor as provided in Section 23-13-11(2).

(2) In addition to this rule any animal designated as a threatened or endangered species is governed by the Endangered Species Act and the unlawful taking of these species may also be a violation of federal law and rules promulgated thereunder.

(3) Pursuant to Section 23-19-9, the division may suspend a certificate of registration issued under this rule.

KEY: wildlife, game laws

March 6, 2006

Notice of Continuation August 5, 2013

23-13-3

23-14-18

23-14-19

R657. Natural Resources, Wildlife Resources.**R657-57. Division Variance Rule.****R657-57-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 this rule is established to provide authority, standards and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

R657-57-2. Definitions.

(1) The terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "CWMU" means cooperative wildlife management unit, as defined in Section 23-23-2;

(b) "Event or condition" means a circumstance in a person's life beyond their control that precludes or substantially limits their ability to obtain or use a wildlife document;

(c) "Harvesting" means, for purposes of this rule, killing an animal;

(d) "Hunt day" means spending any time in the field hunting the permitted animal species in a single day, during lawful hunting hours, and within the prescribed season;

(e) "Immediate family member" means a person's spouse, child, stepchild, grandchild, brother, sister, parent, stepparent, grandparent, mother-in-law, or father-in-law;

(f)(i) "Limited entry hunt" means any hunt identified in the proclamations and guidebooks of the Wildlife Board as:

(A) a premium limited entry or limited entry hunt; and

(B) that awards a bonus point to unsuccessful permit applicants pursuant to R657-62-8.

(ii) "Limited entry hunt" further includes antlerless moose hunts and CWMU hunts available to the public through a Division administered drawing.

(g) "Once-in-a-lifetime hunt" means any hunt for which a wildlife document is issued to take a bull moose, bighorn sheep, bison, or mountain goat.

(h) "Substantially precluded" means participating in no more than one hunt day during the prescribed hunting season because of a qualifying event or condition set forth in R657-57-6.

(i) "Variance" means remedial relief granted by the Division or Wildlife Board to restore a person's opportunity to obtain or use a wildlife document which is completely lost or substantially impaired because of an intervening event or condition; and

(j) "Wildlife document" means any license, permit, tag, certificate of registration, or wildlife permit voucher issued by the Division.

R657-57-3. Division Variance Authority.

(1) The Division may issue variances to qualified individuals, subject to the standards, limitations, requirements, and procedures in this rule.

R657-57-4. Division Variance Authority Scope.

(1)(a) The Division may grant a season extension variance extending the hunting season on an applicant's wildlife document to the same or substantially similar hunt in the following year, provided:

(i) the variance request involves a wildlife document for a:

(A) once-in-a-lifetime hunt under R657-5;

(B) conservation permit hunt under R657-41;

(C) limited entry landowner permit hunt under R657-43;

(D) poaching-reported reward permit hunt under R657-5;

or

(E) CWMU hunt obtained through the operator or landowner under R657-37-9.

(ii) the applicant was substantially precluded during the

prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the season extension occurs the following year and is restricted to the same species, gender, unit, weapon type, and season as the original wildlife document;

(iv) any changes in unit descriptions and season dates in the extension year are applied; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(b) Any waiting period associated with a wildlife document for which a season extension variance is granted begins on the date the original wildlife document is obtained.

(2)(a) The Division may grant a variance by restoring forfeited bonus points and waiving an incurred waiting period, provided:

(i) the variance request involves a wildlife document for a:

(A) limited entry hunt or once-in-a-lifetime hunt; or

(B) any other hunt that triggers a waiting period to participate in a Division administered drawing;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(b) The Division may not restore a bonus point on a wildlife document that did not cause a bonus point forfeiture.

(3)(a) The Division may grant a variance by restoring forfeited preference points, provided:

(i) the variance request involves a wildlife document obtained through a Division administered drawing and for which preference points are awarded to unsuccessful applicants and forfeited by successful applicants;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(4)(a) The Division may grant a variance by awarding a bonus or preference point to a person who filed an untimely wildlife document application in a Division administered drawing, provided:

(i) the variance request involves a wildlife document for any hunt identified in Subsections (2)(a)(i) or (3)(a)(i);

(ii) the applicant was significantly impaired from filing a timely application in a Division administered drawing because of a qualifying event or condition set forth in R657-57-6;

(iii) the untimely application was rejected and a bonus or preference point was not awarded for the selected species;

(iv) the applicant would have been eligible to receive the bonus or preference point had the application been timely filed; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(5) A Division administered drawing for purposes of subsection (2) does not include a drawing conducted at a wildlife convention pursuant to R657-55.

(6) The Division may not refund wildlife document fees, except as authorized in Sections 23-19-38, 23-19-38.2 and R657-42-5.

R657-57-5. Group Applications.

(1) Except as provided in Subsection (2), all members of a group successful in obtaining a wildlife document pursuant to R657-62-7 are eligible to receive the same variance relief granted by the Division to any single member of the group under R657-57-4(2) or (3).

(2) Group members are not eligible to receive a refund of the wildlife document fee unless otherwise authorized by Sections 23-19-38, 23-19-38.2, and R657-42-5.

R657-57-6. Qualifying Events and Conditions.

(1) The Division's authority to grant a variance consistent with the requirements of this rule is limited to persons that are completely or substantially precluded during the prescribed season from participating in the hunting activity authorized by an eligible wildlife document, or precluded or substantially impaired from filing a timely wildlife document application in a Division administered drawing because of:

- (a) personal illness or injury;
- (b) the death, or significant injury or illness of an immediate family member; or
- (c) mobilization or deployment under orders of the United States Armed forces, a public health organization, or public safety organization in the interest of national defense or a national emergency.

R657-57-7. Variance Application.

(1) A person may request a variance pursuant to the requirements of this rule by filing an application with the Division within 120 days of the:

- (a) last day of the hunting season for which a season extension variance is requested; or
- (b) drawing application deadline for which a bonus or preference point variance is sought.

(2) The Division may not grant a variance under this rule when the application is received beyond the 120 days limitation period set forth in Subsection (1).

(3) An application for a season extension variance under R657-57-4(1), a bonus point restoration and waiting period waiver variance under R657-57-4(2), or a preference point restoration variance under R657-57-4(3) shall contain the following information and documentation:

- (a) name, address and telephone number of the applicant;
- (b) a brief statement of the variance relief sought;
- (c) the original wildlife document for which a season extension variance is sought with an undetached and unnotched tag;
- (d) a statement verifying the applicant was substantially precluded from participating in a qualified hunt because of:
 - (i) personal illness or injury;
 - (ii) the death, or significant injury or illness of an immediate family member; or
 - (iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.

(e) corroborating documentation of the qualifying event or condition listed in Subsection (2)(d), in the form of:

- (i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;
- (ii) a photocopy of the deceased immediate family member's certified death certificate; or
- (iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of duty while deployed or mobilized.

(4) An application for a bonus or preference point variance under R657-57-4(4) shall contain the following information and documentation:

- (a) name, address and telephone number of the applicant;
- (b) a brief statement of the variance relief sought;
- (c) a description of the wildlife document application and permit type for which a bonus or preference point variance is sought, including the wildlife species and sex, season dates, and weapon type;

(d) a statement verifying the applicant was precluded or substantially impaired from submitting a wildlife document application because of:

- (i) personal illness or injury;
- (ii) the death, or significant injury or illness of an immediate family member; or
- (iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.

(e) corroborating documentation of the qualifying event or condition listed in Subsection (3)(d), in the form of:

- (i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;
- (ii) a photocopy of the deceased immediate family member's certified death certificate; or
- (iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of their duty while deployed or mobilized.

(5) The Division may reject an application that is incomplete or that contains false or misleading information.

(6) The Division may require the applicant to provide additional information, documentation, or clarification in conjunction with an application to determine eligibility for a variance.

(7) The Division should make its written decision within 30 days of receiving an application for variance and mail a copy of the decision to the applicant.

R657-57-8. Division Variance Committee.

(1) The Division shall establish a variance committee consisting of the Wildlife Chief, Administrative Services Chief, Licensing Coordinator, and Rules Coordinator, or their designees, which shall:

- (a) review variance applications submitted to the Division pursuant to this rule;
- (b) determine facts relative to variance requests;

(c) apply the provisions of this rule to relevant facts; and
 (d) grant or deny variance requests in accordance with this rule.

(2) Any variance request granted or denied shall be reviewed and approved by the Division director/designee before notice of decision is provided to the variance request applicant.

R657-57-9. Variance Denial.

(1) The variance committee and Division director shall deny a variance request where the applicant:

- (a) fails to satisfy the variance criteria set forth in this rule;
- (b) is under a judicial or administrative order suspending his/her Utah hunting privileges for the species at the time:
 - (i) the variance request is filed or at any time during a extension season; or
 - (ii) the wildlife document application period expired for a bonus or preference point variance;
- (c) was legally ineligible to receive or use the wildlife document for which a season extension variance is sought;
- (d) is legally ineligible to hunt during the extension season;
- (e) is legally ineligible to use the weapon type authorized by the wildlife document during the original hunting season or the extension season;
- (f) provides false or misleading information on a material fact in the variance request application; or
- (g) provides false or misleading information on a material fact in a previous variance request application.

(2) The Division may deny a variance request when it is contrary to sound public policy, wildlife management objectives, Division policies and interests, or the interests sought to be served by this rule.

R657-57-10. Wildlife Board Appeals.

(1) A person may appeal the Division's decision on a variance application to the Wildlife Board pursuant to the requirements of this rule. The appeal request must be in writing and received by the Division within 30 calendar days of the issuance date on the Division's decision.

(2) The appeal shall contain the following information and documentation:

- (a) name, address and telephone number of the petitioner;
- (b) a statement of the variance relief sought and justification for the relief;
- (c) a description of the wildlife document application for which the variance is sought, including the document number, species and sex, season dates, and weapon type;
- (d) the original wildlife document for which the variance is sought;
- (e) a statement describing the degree of lost opportunity because of an event or condition; and
- (f) corroborating documentation of the event or condition listed in R657-57-7(3)(d) and (4)(d), which may include:
 - (i) a physician's written statement;
 - (ii) a certified death certificate photocopy;
 - (iii) a photocopy of the military orders;
 - (iv) a letter from an employment supervisor on official letterhead; or
 - (v) court documentation.

(3) The Wildlife Board may reject a variance appeal that is incomplete or that contains false or misleading information.

(4) The Wildlife Board may require the petitioner to provide additional information, documentation, or clarification in conjunction with the variance appeal.

(5) The Wildlife Board may set a time and date for a hearing on the variance appeal where the petitioner may be given an opportunity to address the Wildlife Board concerning the appeal.

- (a) The Wildlife Board will provide the petitioner notice

of the date, time, and location of the hearing.

(b) Failure to participate in the hearing may result in dismissal of the variance appeal.

(6) The Wildlife Board may sustain, overturn, or modify the Division's order which is the subject of the variance appeal, provided the relief granted is consistent with the standards, limitations, requirements, and procedures in R657-57-11 through R657-57-13.

(7) The Wildlife Board will prepare a written decision on the variance appeal and mail a copy to the petitioner.

R657-57-11. Wildlife Board Variance Authority.

(1) Except as provided otherwise in this rule, the Wildlife Board may grant a variance to any regulation promulgated in Title R657 of the Administrative Code or in proclamation concerning the acquisition or use of a wildlife document, provided the event or condition justifying the variance:

- (a) is not the result of the applicant's willful misconduct or gross negligent acts or omissions;
- (b) substantially precludes the applicant from participating in the activity authorized by the wildlife document; or
- (c) completely or significantly impairs the applicant from filing a timely application in a Division administered drawing; and
- (d) is of a nature that it deprives opportunity from the applicant in a substantially more severe manner than other similarly situated individuals.

(2) The Wildlife Board is limited to considering only those variance applications on which the Division has issued a letter indicating the variance relief sought is beyond its legal authority to grant.

(3) The Wildlife Board shall consider the Division's recommendation on a variance request.

(4) The Wildlife Board may grant a variance that extends a wildlife document season no more than one year into the future.

(5) The Wildlife Board may award a bonus or preference point pursuant to a variance request only when the applicant would have received such a point had the event or condition not intervened.

(6) The Wildlife Board may not grant a variance:

- (a) where the request is filed with the Division beyond the 120 day deadline established in R657-57-7(1);
- (b) where the applicant is not substantially precluded from participating in the prescribed wildlife activity;
- (c) for a season extension on any hunt not identified in R657-57-4(1)(a)(i) as eligible for a season extension;
- (d) where the applicant was successful in harvesting an animal for which the wildlife document was issued; or
- (e) in direct conflict with any provision of the Wildlife Code or elsewhere in statute.

(7) The Wildlife Board may not refund wildlife document fees, except as authorized in Sections 23-19-38 and 23-19-38.2.

R657-57-12. Variance Guidelines.

(1) The Wildlife Board may use the following guidelines in considering and deciding variance appeals and requests submitted pursuant to this rule:

- (a) monetary cost of the wildlife document;
- (b) degree of difficulty in obtaining the original wildlife document;
- (c) future opportunity to obtain the same or similar wildlife document;
- (d) extent of lost opportunity;
- (e) time actually engaged in the activity authorized by the wildlife document relative to the overall season length;
- (f) time available to engage in the activity authorized by the wildlife document prior to the event or condition precluding further activity;

- (g) impact on wildlife management objectives;
 - (h) degree of difficulty in tracking and monitoring season extensions into the future;
 - (i) applicant's fault or contribution in failing to mitigate the degree of lost opportunity;
 - (j) nature of the event or condition contrasted against the advisability of attempting to insure optimal opportunity;
 - (k) objective of a variance is to restore lost opportunity, not provide increased opportunity; and
 - (l) consistency with previous variance request decisions.
- (2) Nothing herein shall be construed as limiting or prohibiting the Wildlife Board from considering additional factors in its discussions and deliberations concerning variance appeals and requests.

R657-57-13. Wildlife Board Variance Denial.

- (1) The Wildlife Board shall deny a variance appeal or request where the applicant:
- (a) fails to satisfy the variance criteria set forth in this rule;
 - (b) is under a judicial or administrative order suspending his/her wildlife document privileges at the time the variance request is filed or at any time while the variance would be in effect;
 - (c) was legally ineligible to apply for, obtain, or use the original wildlife document for which a variance is sought;
 - (d) is legally ineligible to engage in the activity proposed for authorization in a variance;
 - (e) is legally ineligible to use the weapon type or implement authorized by a wildlife document during the original season or the proposed substitute season;
 - (f) provides false or misleading information on a material fact in the variance request application or the appeal; or
 - (g) provides false or misleading information on a material fact in a previous variance request application or appeal.
- (2) The Wildlife Board may deny a variance appeal or request when it is contrary to sound public policy, wildlife management objectives, Division policies and interests, or the interests sought to be served by this rule.

R657-57-14. Fraud, Deceit, or Misrepresentation.

Any variance obtained under this rule by fraud, deceit or misrepresentation is void.

R657-57-15. Finality of Decision.

- (1) The decision of the Wildlife Board on any variance appeal or request under this rule constitutes final agency action and is not subject to:
- (a) further administrative review; or
 - (b) judicial review under Title 63G, Chapter 4 of the Utah Code, Utah Administrative Procedures Act.
- (2) The variance relief authorized in this rule is discretionary and neither a right nor entitlement in form or substance. The Division and Wildlife Board shall exercise sole discretion in determining whether relief will be granted and to what extent.

KEY: wildlife, permits**August 21, 2012****Notice of Continuation August 5, 2013****23-14-18****23-14-19**

R657. Natural Resources, Wildlife Resources.**R657-59. Private Fish Ponds.****R657-59-1. Purpose and Authority.**

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for private fish ponds.

(2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.

(3) Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration or exemption certificate issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

R657-59-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.

(c)(i) "Aquaculture product" means privately purchased aquatic wildlife, or their eggs or gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization.

(i) Triploid salmonids accepted as sterile under this subsection shall originate from a source that is certified as incapable of reproduction using the following protocols:

(A) fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division;

(B) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division; and

(C) sterility shall be determined by sampling and testing 60 fish from each egg lot with procedures generally accepted in the scientific community as reliable for verifying triploidy with a 95% or greater success rate.

(ii) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product in a private fish pond, provided the sterile salmonids are kept segregated from other fertile salmonids.

(iii) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout cross) and tiger trout (brown trout/brook trout cross).

(e) "Exemption certificate" means a document issued by the division pursuant to R657-59-7 that exempts a designated private fish pond from the requirement of obtaining a certificate of registration to stock aquaculture product in the pond.

(f)(i) "HUC" or "Hydrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States. HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.

(ii) HUC maps and other associated information are available at <http://water.usgs.gov/wsc/sub/1602.html>.

(g)(a) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display.

(b) "Ornamental aquatic animal species" does not include:

(i) fresh water:

(A) sport fish - aquatic animal species commonly angled or harvested for recreation or sport;

(B) baitfish - aquatic animal species authorized for use as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;

(C) food fish - aquatic animal species commonly cultured or harvested from the wild for human consumption; or

(D) native species; or

(ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or

(iii) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23. (i) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.

(h) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.

(i) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(j) "Salmonid" means any fish belonging to the trout/salmon family.

R657-59-3. Certificate of Registration Not Required.

(1) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided the following conditions are satisfied:

(a) the pond is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;

(b) the pond is properly screened consistent with the requirements in R657-59-15 to prevent the movement of aquatic wildlife into the pond or the movement of any aquaculture product out of the pond;

(c) the aquaculture product is delivered to the pond by a licensed aquaculture facility as defined in Section 4-37-103;

(d) the owner, lessee, or operator of the pond obtains from the aquaculture facility delivering the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Section 4-37-501 authorizing the aquaculture facility to culture and transport the species of aquaculture product received at the pond;

(e) the species, strain, and reproductive capability of the aquaculture product received is authorized for stocking in the area where the pond is located consistent with the requirements in R657-59-16;

(f) the aquaculture product received is of sufficient size to be incapable of escaping the pond through or around the screen;

(g) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section; and

(h) the owner, lessee, or operator of a private fish pond or an invitee has not previously been found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule.

R657-59-4. Aquaculture Facility Reporting Requirements.

(1) A person who owns or operates an aquaculture facility shall file an annual report with the division documenting each

sale or transfer of live aquaculture product made pursuant to R657-59-3 and R657-59-7 to a private fish pond owner, lessee, or operator.

(2) The report shall contain:

(a) the name, address, and Utah health approval number of the person;

(b) the name, address, and phone number of the private fish pond's owner, lessee, or operator;

(c) the number and weight of aquaculture product by:

(i) species;

(ii) strain; and

(iii) reproductive capability;

(d) date of sale or transfer;

(e) description of the private fish pond location, including UTM coordinates; and

(f) written verification for each live sale or transfer that the private fish pond was inspected and is in compliance with the requirements of Sections 23-15-10(2) and (3) (c) and this rule.

(3) The report required in this Subsection shall be submitted to and received by the division no later than December 31.

R657-59-5. Certificate of Registration Required.

(1) A certificate of registration must be obtained from the division to receive, stock, or possess an aquaculture product in a private fish pond where:

(a) the aquaculture product is classified under R657-59-16 as an unauthorized species, strain, or reproductive capability for the area where the pond is located;

(b) the aquaculture facility does not deliver the aquaculture product directly to the private fish pond; or

(c) the owner, lessee, or operator of a private fish pond or an invitee is found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule.

(2) A separate certificate of registration is required for each private fish pond as defined under "aquaculture facility" in R657-59-2.

R657-59-6. Application for a Certificate of Registration.

(1) A person may apply to receive a certificate of registration for a private fish pond by submitting an application with the required handling and inspection fee to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.

(a) Application forms are available at all division offices and at the division's internet address.

(2) A certificate of registration may be issued after a division representative inspects the private fish pond and confirms that the pond and the aquaculture products requested for stocking in the pond meet all requirements in this rule and Title 23 of the Utah Code.

(3) The application may require up to 30 days for processing.

(4) The division may deny a private fish pond application where:

(a) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(b) the pond is located on a natural lake, natural flowing stream, or a reservoir constructed on a natural stream channel;

(c) the pond is not screened consistent with the requirements in R657-59-15;

(d) the source of the aquaculture product is not an authorized aquaculture facility with a health approval number issued pursuant to Section 4-37-501;

(e) the applicant or its agents or invitees have previously violated of any provision of Title 4, Chapter 37 of the Utah Code, Title 23 of the Utah Code, or this rule;

(f) receiving or stocking the aquaculture product in the pond may:

(i) violate any federal, state or local law or any agreement between the state and another party;

(ii) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(iii) pose an identifiable adverse threat to other wildlife species or their habitat; or

(iv) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives;

(g) the aquaculture product received is sufficiently small to be capable of escaping the pond through or around the screen; or

(h) non-salmonid aquaculture product will be stocked in a pond within the 100 year flood plain (below 6500 feet in elevation) in the Green River and Colorado River drainages and the pond does not meet FEMA standards on construction and screening.

(5) An application for private fish pond certificate of registration may not be denied without the review and consent of the division director or a designee.

(6) A private fish pond certificate of registration shall remain effective for 5 years from the date of issuance, unless:

(a) amended by the division at the request of private fish pond owner, lessee, or operator;

(b) terminated or modified by the division pursuant to R657-59-17; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

(7) Certificates of registration are renewable on or before the expiration date identified on the certificate of registration and upon payment of the prescribed handling, and inspection fees.

R657-59-7. Exemption Certificate.

(1) Upon application for a private fish pond certificate of registration and a risk assessment of the pond by the division under R657-59-6, the Division may issue an exemption certificate in lieu of a certificate of registration where the following conditions exist:

(a) The pond is eligible to receive a certificate of registration under the requirements of this chapter;

(b) The pond and species, strain and reproductive capability of aquaculture product requested present no risk to native aquatic wildlife species because:

(i) the location and configuration of the pond physically eliminate the possibility of aquaculture product escaping into the surface waters of the state;

(ii) the pond has no inflow or outflow connection with the surface waters of the state;

(iii) the pond is located in an area where escapement of aquaculture product will cause no ecological damage to native aquatic wildlife species; or

(iv) the pond is located in an area where no Tier I or II aquatic wildlife species on the division's sensitive species list or threatened or endangered species listed under the Endangered Species Act will be threatened by the risk of escapement; and

(c) the aquaculture product is delivered directly to the pond by the aquaculture facility.

(2) The exemption certificate shall have the legal effect of a certificate of registration for purposes of stocking the pond with the species, strain and reproductive capability of aquaculture product authorized in the exemption certificate.

(3) Aquaculture facilities supplying aquaculture product to private fish ponds operating under an exemption certificate shall comply with:

(a) the written terms of the exemption certificate; and

(b) the inspection and reporting requirements in R657-59-

4.

(4) The exemption certificate will:

(a) designate the species, strain and reproductive capability of aquaculture product that may be stocked in the pond;

(b) identify any restrictions or conditions relative to stocking and maintaining aquaculture product in the pond;

(c) identify the owner, lessee, or operator of the private fish pond; and

(d) describe the private fish pond's location, including UTM coordinates.

(5) The private fish pond exemption certificate shall remain effective, without the requirement of renewal, for the useful life of the pond, provided:

(a) the ownership of the pond does not change;

(b) the pond, screen, and inflow and outflow structures remain in the same state that existed when inspected;

(c) the species, strain, and reproductive capability of aquaculture product stocked and maintained in the pond remains consistent with the that authorized in the exemption certificate; and

(d) the exemption certificate is not modified, terminated, or suspended by the division pursuant to Section 23-19-9, R657-59-1(3), or R657-59-17 or a court of competent jurisdiction.

(6) Any private fish pond operating under authority of an exemption certificate which is modified, terminated, or suspended pursuant to Section 23-19-9, R657-59-1(3), or R657-59-17 shall be subject to the aquaculture product depopulation requirements in R657-59-8.

R657-59-8. Failure to Renew Certificates of Registration.

(1) If an owner, lessee, or operator of a private fish pond fails to renew the certificate of registration upon expiration, or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of as follows:

(a) Unless the Wildlife Board orders otherwise, all aquaculture products must be removed within 30 days of suspension or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or

(b) At the discretion of the division, aquaculture products may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.

(2) Aquaculture products in a private fish pond may not be moved alive unless the pond has received disease testing and is issued a health approval number from the Department of Agriculture and Food pursuant to Section 4-37-501.

(3) Aquaculture products from a private fish pond infected with any pathogen specified in the Department of Agriculture Rule R58-17 must be disposed of as directed by the division to prevent further spread of such pathogen.

R657-59-9. Reporting Requirements for Private Fish Ponds Authorized by Certificate of Registration.

(1) Any person that possesses a certificate of registration for a private fish pond must submit to the division an annual report of all live aquaculture products purchased or acquired during the year. This report must contain the following information:

(a) the name, address, and phone number of the private fish pond's owner, lessee, or operator;

(b) name, address, and certificate of registration number of the seller or supplier;

(c) the number and weight of aquaculture product by:

(i) species;

(ii) strain; and

(iii) reproductive capability;

(d) date of sale or transfer;

(2) A form for this information is provided by the division.

(3) The annual report must be received by the division no later than January 30.

R657-59-10. Importation.

(1)(a) The species, strains, and reproductive capabilities of live aquaculture products that may be imported and stocked in a private fish pond without a certificate of registration are provided in R657-59-16;

(b) A certificate of registration or exemption certificate is required to import and stock all species, strains and reproductive capabilities of live aquaculture products not specifically exempted from licensure in R657-59-16.

(2) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City. Applications may require up to 30 days for action.

R657-59-11. Acquiring and Transferring Aquaculture Products.

(1) Live aquaculture products, other than ornamental fish, may be:

(a) purchased or acquired only from sources that have a valid certificate of registration from the Utah Department of Agriculture and Food to sell such products or from a person located outside Utah if that person is approved by the Utah Department of Agriculture and Food to import the particular aquaculture product; and

(b) acquired, purchased or transferred only from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a fish health approval number as provided in Section 4-37-501. This also applies to separate facilities owned by the same entity since each facility is treated separately, regardless of ownership.

(2)(a) Any person who has been issued a valid certificate of registration may transport live aquaculture products as specified on the certificate of registration to the private fish pond.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped, by species; and

(iii) name, address, and certificate of registration number, if applicable, of the destination.

R657-59-12. Inspection of Records and Facilities.

(1) The following records and information must be maintained for a period of two years and must be available for inspection by a division representative during reasonable hours:

(a) records of purchase and acquisition of aquaculture products, including records maintained in connection with the reporting requirements in R657-59-9;

(b) certificates of registration; and

(c) valid identification of stocks.

(2) The division and its authorized representatives may inspect a private fish pond at any time to verify compliance with the requirements of Title 23 of the Utah Code and this rule, and to conduct pathological testing.

R657-59-13. Prohibited Activities.

(1) A private fish pond may not be developed on a natural lake; natural flowing stream; or reservoir constructed on a natural stream channel.

(2) Live aquatic wildlife may not be collected from the wild and placed in a private fish pond.

(3) Any aquaculture product received or held in a private

fish pond may not be released from the pond or transported live to another location.

(4) A private fish pond owner, lessee, or operator may not sell, donate, or transfer from the pond live aquaculture product, including gametes and eggs.

R657-59-14. Fishing License and Transportation of Dead Aquaculture Product.

(1) A fishing license is not required to take fish from a legally recognized private fish pond.

(2) A fishing license is not required to transport dead aquaculture product from a private fish pond, provided the person possesses a receipt with the following information:

- (a) species and number of fish;
- (b) date caught;
- (c) certificate of registration number or exemption certificate number of the private fish pond, where applicable; and
- (d) name, address, and telephone number of the owner, lessee, or operator of the private fish pond.

(3) Any person that has a valid fishing license may transport up to a legal limit of dead aquaculture product from a private fish pond without further documentation.

R657-59-15. Screen Requirements.

(1) All inlets and outlets of a private fish pond must be screened as follows to prevent the movement of aquatic wildlife into the pond or the escapement of any aquaculture product from the pond:

- (a) the screen shall be constructed of durable materials that are capable of maintaining integrity in a water and air environment for an extended period of time;
- (b) the screen shall have no openings, seams or mesh width greater than the width of the fish being stocked;
- (c) screen construction and placement shall eliminate any movement of aquaculture product into or out of the pond;
- (d) screen dimensions shall be based on precluding escapement of the size of the fish being stocked;
- (e) all water entering or leaving the pond, including run off and other high water events, shall flow through a screen consistent with the requirements of this subsection; and
- (f) the screen shall be maintained and in place at all times while any aquaculture product remains in the pond.

(2) Ponds with no inlet or outlet to the surface waters of the state are not required to have a screen or device to restrict movement of aquaculture product.

R657-59-16. Species, Strains, and Reproductive Capabilities of Aquaculture Product Authorized by Area for Stocking in Private Fish Ponds Without a Certificate of Registration or Exemption Certificate.

(1) A certificate of registration or exemption certificate must be obtained from the division pursuant to R657-59-6 and R657-59-7 prior to stocking in any private fish pond:

- (a) non-salmonid aquaculture product; or
- (b) any other species or reproductive capability of aquaculture product not specifically authorized in this Section.

(2)(a) The following subsections designate areas closed to stocking aquaculture product in private fish ponds using a general area identifier such as canyon, creek, spring, or location and then followed by a specific area identifier in the form of hydrologic unit code (HUC) or township and range.

(b) The general area identifier is included for purposes of reference only and may include all or part of the associated drainage.

(c) The HUC or township and range designations constitute the legal descriptions of the actual closed areas.

(3) Certified sterile salmonid aquaculture product may be stocked without a certificate of registration or exemption

certificate in any private fish pond within the state consistent with R657-59-3, except for ponds located within the following areas:

- (a) Washington County - stocking is prohibited in the following areas:
 - (i) Ash Creek - HUC 150100080405;
 - (ii) Beaver Dam Wash - HUC 15010010;
 - (iii) Laverkin Creek - HUC 150100080302;
 - (iv) Leeds Creek - HUC 150100080906;
 - (v) Baker Dam Reservoir/Santa Clara River - HUC 150100080704;
 - (vi) Tobin Wash - HUC 150100080802;
 - (vii) Sand Cove Wash - HUC 150100080801;
 - (viii) Manganese Wash/Santa Clara River - HUC 150100080804;
 - (ix) Wittwer Canyon/Santa Clara River - HUC 150100080808;
 - (x) Cove Wash/Santa Clara River - HUC 150100080809;
 - (xi) Moody Wash - HUC 150100080603;
 - (xii) Upper Moody Wash - HUC 150100080602;
 - (xiii) Magotsu Creek - HUC 150100080704;
 - (xiv) South Ash Creek - HUC 150100080405;
 - (xv) Water Canyon - HUC 150100080701;
 - (xvi) Chinatown Wash/Virgin River - HUC 150100080508;
 - (xvii) Lower Gould Wash - HUC 150100080508;
 - (xviii) Grapevine Wash/Virgin River - HUC 150100080903;
 - (xix) Cottonwood Wash/Virgin River - HUC 150100080909;
 - (xx) Middleton Wash/Virgin River - HUC 150100080910;
 - (xxi) Lower Fort Pierce Wash - HUC 150100080605;
 - (xxii) Atkinville Wash - HUC 150100080303;
 - (xxiii) Lizard Wash - HUC 150100080302;
 - (xxiv) Val Wash/Virgin River - HUC 150100080307;
 - (xxv) Bulldog Canyon - HUC 150100080310; and
 - (xxvi) Fort Pierce Wash - HUC 15010009.

(j) Fertile rainbow trout may be stocked without a certificate of registration or exemption certificate in any private fish pond within the state consistent with R657-59-3, except for ponds located within the following areas and elevations:

- Beaver County - stocking is prohibited in the following:
 - (i) North Creek - HUCs 160300070203, 160300070208;

and

- (ii) Pine Creek (near Sulphurdale) - HUC 160300070501.
- (b) Box Elder County - stocking is prohibited in the following:

- (i) Morison Creek - HUC 16020308;
- (ii) Bettridge Creek - HUC 16020308;
- (iii) Death Creek - HUC 16020308;
- (iv) Camp Creek - HUC 16020308;
- (v) Goose Creek - HUC 17040211;
- (vi) Raft River - HUC 17040210;
- (vii) Fat Whorled Pond Snail Springs - Township 10 North, Ranges 4 and 5 West; and
- (viii) Mantua Reservoir - HUC 16010204.
- (c) Cache County - stocking is prohibited in the following:
 - (i) Logan River - HUC 16010203;
 - (ii) Blacksmith Fork - HUC 16010203;
 - (iii) East Fork Little Bear River - HUC 16010203; and
 - (iv) Little Bear River - HUC 16010203.
- (d) Carbon County - stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (e) Daggett County - stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (f) Davis County - no areas closed to stocking fertile rainbow trout.

(g) Duchesne County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(h) Emery County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(i) Garfield County - stocking is prohibited in the following areas:

(i) Birch Creek/Main Canyon - HUC 140700050102;

(ii) Center Creek (tributary to East Fork Sevier R) HUC 160300020412;

(iii) Cottonwood Creek - HUC 160300020406;

(iv) East Fork of Boulder Creek/ West Fork Boulder Creek - HUC 140700050206; and

(v) Ranch Creek (East Fork Sevier River drainage) - HUC 160300020405.

(j) Grand County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(k) Iron County - no areas closed to stocking fertile rainbow trout.

(l) Juab County - stocking is prohibited in the following areas:

(i) Sulphur Wash - HUC 160203011303;

(ii) Middle Pleasant Valley Draw - HUC 160203011402;

(iii) Lower Pleasant Valley Draw - HUC 160203011403;

(iv) Cookscomb Ridge - HUC 160203011501;

(v) Outlet Salt Marsh Lake - HUC 160203011502;

(vi) Deep Creek Range - HUC 160203011503;

(vii) Snake Valley - HUC 160203011504;

(viii) Little Red Cedar Wash - HUC 160203011505;

(ix) Trout Creek - HUC 160203060101;

(x) Smelter Knolls - HUC 160203060104;

(xi) Toms Creek - HUC 160203060201;

(xii) Goshute Canyon - HUC 160203060202;

(xiii) Indian Farm Creek - HUC 160203060204;

(xiv) Spring Creek - HUC 160203060803;

(xv) Fifteenmile Creek - HUC 160203060804;

(xvi) East Creek/East Deep Creek - HUC 160203060805;

(xvii) East Creek/East Deep Creek - HUC 160203060806;

(xviii) West Deep Creek - HUC 160203060808;

(xix) Horse Valley - HUC 160203060304;

(xx) Starvation Canyon - HUC 160203060305;

(xxi) Cane Springs - HUC 160203060307;

(xxii) Fish Springs Range - HUC 160203060308;

(xxiii) Middle Fish Springs Wash - HUC 160203060309;

(xxiv) Lower Fish Springs Wash - HUC 160203060403;

(xxv) Fish Springs - HUC 160203060405;

(xxvi) Wilson Health Springs - HUC 160203060407;

(xxvii) Vernon Creek - HUC 160203040102;

(xxviii) Outlet Chicken Creek - HUC 160300050206;

(xxix) Little Valley/Sevier River - HUC 160300050403;

(xxx) Pole Creek/Salt Creek - HUC 160202010104; and

(xxxii) West Creek/Current Creek - HUC 160202010107.

(m) Kane County - no areas closed to stocking fertile rainbow trout.

(n) Millard County - stocking is prohibited in the following areas:

(i) Outlet Salt Marsh Lake - HUC 160203011502;

(ii) Sulphur Wash - HUC 160203011303;

(iii) Cookscomb Ridge - HUC 160203011501;

(iv) Tungstonia Wash - HUC 160203011302;

(v) Salt Marsh Lake - HUC 160203011304;

(vi) Indian George Wash - HUC 160203011301

(vii) Outlet Bishop Springs - HUC 160203011203;

(viii) Warm Creek - HUC 160203011204;

(ix) Headwaters Bishop Springs - HUC 160203011202;

(x) Indian Pass - HUC 160203011107;

(xi) Chevron Ridge - HUC 160203011110;

(xii) Petes Knoll - HUC 160203011109;

(xiii) Red Gulch - HUC 160203011102;

(xiv) Horse Canyon - HUC 160203011106;

(xv) Hampton Creek - HUC 160203011105;

(xvi) Knoll Springs - HUC 160203011103;

(xvii) Browns Wash - HUC 160203011101;

(xviii) Outlet Baker Creek - HUC 160203011004;

(xix) Outlet Old Mans Canyon - HUC 160203011003;

(xx) Hendrys Creek - HUC 160203011104;

(xxi) Headwaters Old Mans Canyon - HUC 160203011002;

(xxii) Rock Canyon - HUC 160203011001

(xxiii) Silver Creek - Baker Creek - HUC 160203010806;

(xxiv) Outlet Weaver Creek - HUC 160203010804;

(xxv) Conger Spring - HUC 160203010702; and

(xxvi) Sheepmens Little Valley - HUC 160203010607.

(o) Morgan County - stocking is prohibited in the following areas:

(i) Weber River - HUC 16020102;

(ii) East Canyon Creek - HUC 16020102; and

(iii) Lost Creek - HUC 16020101.

(p) Piute County - stocking is prohibited in the following areas:

(i) Birch Creek HUC 160300010603;

(ii) Clear Creek HUC 1603000301;

(iii) Manning Creek - HUC 160300030203;

(iv) Tenmile Creek HUC 160300030204.

(q) Rich County - stocking is prohibited in the following areas:

(i) Bear Lake including all its tributaries - HUC 16010201;

(ii) Big Creek - HUC 16010101;

(iii) Birch Creek from Birch Creek Reservoir upstream and tributaries HUC 16010101;

(iv) Little Creek from Little Creek Reservoir upstream and tributaries HUC 16010101;

(v) Otter Creek and its tributaries HUC 16010101;

(vi) Woodruff Creek - HUC 16010101; and

(vii) Home Canyon and Meachum Canyon (Deseret Ranch) - HUC 16010101.

(r) Salt Lake County - stocking is prohibited in the following areas:

(i) Big Cottonwood Canyon Creek - HUC 160202040201;

(ii) Little Cottonwood Canyon Creek - HUC 160202040202;

(iii) Mill Creek - HUC 160202040301;

(iv) Parleys Creek - HUC 160202040302;

(v) Emigration Creek - HUC 160202040303;

(vi) City Creek - HUC 160202040304; and

(vii) Red Butte Creek/Emigration Creek - HUC 160202040306.

(s) San Juan County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(t) Sanpete County:

(i) stocking is prohibited in the following areas west of the Manti Mountain Range divide:

(A) Dry Creek/San Pitch River - HUC 160300040201;

(B) Oak Creek/San Pitch River - HUC 160300040202;

(C) Cottonwood Canyon/San Pitch River - HUC 160300040203;

(D) Birch Creek/San Pitch River - HUC 160300040204;

(E) Pleasant Creek - HUC 160300040205;

(F) Dublin Wash/San Pitch River - HUC 160300040206;

(G) Cedar Creek - HUC 160300040207;

(H) Spring Hollow/San Pitch River - HUC 160300040208;

(I) Upper Oak Creek - HUC 160300040302;

(J) Petes Canyon/San Pitch River - HUC 160300040306;

(K) Uinta Gulch - HUC 160202020201;

(L) Upper Thistle Creek - HUC 160202020202;

(M) Nebo Creek - HUC 160202020203;

- (N) Middle Thistle Creek - HUC 160202020204;
 - (O) Dry Canyon/San Pitch River - HUC 160300040308;
 - (P) Maple Canyon/San Pitch River - HUC 160300040309;
 - (Q) Gunnison Reservoir/San Pitch River - HUC 160300040503;
 - (R) Outlet San Pitch River - HUC 160300040505;
 - (S) Beaver Creek - HUC 140700020201;
 - (T) Box Canyon/Muddy Creek - HUC 140700020203;
 - (U) Skumpah Creek-Salina Creek - HUC 160300030402;
- and
- (V) Headwaters Twelvemile Creek - HUC 160300040402.
 - (ii) stocking is prohibited in any private fish pond above 7000 feet in elevation east of the Manti Mountain Range divided.
 - (u) Sevier County - stocking is prohibited in the following areas:
 - (i) Clear Creek HUC 1603000301;
 - (ii) Salina Creek - HUC 160300030402; and
 - (iii) U M Creek - HUC 140700030101.
 - (v) Summit County - stocking is prohibited in the following areas:
 - (i) Bear River and all tributaries - HUC 16010101;
 - (ii) Mill Creek and all tributaries - HUC 16010101;
 - (iii) Muddy Creek and Van Tassel Creek - HUC 14040108;
 - (iv) Little West Fork/Blacks Fork - HUC 14040107;
 - (v) Black Fork - HUC 14040107;
 - (vi) Archie Creek - HUC 14040107;
 - (vii) West Fork Smiths Fork - HUC 14040107;
 - (viii) Gilbert Creek - HUC 14040107;
 - (ix) East Fork Smiths Fork - HUC 14040107;
 - (x) Dahalgreen Creek - HUC 14040106;
 - (xi) Henrys Fork - HUC 14040106;
 - (xii) Spring Creek and Poison Creek - HUC 14040106;
 - (xiii) West Fork Beaver Creek - HUC 14040106;
 - (xiv) Middle Fork Beaver Creek - HUC 14040106;
 - (xv) Echo Creek - HUC 16020101;
 - (xvi) Chalk Creek - HUC 16020101;
 - (xvii) Silver Creek - HUC 16020101;
 - (xviii) Weber River - HUC 16020101;
 - (xix) Beaver Creek - HUC 16020101;
 - (xx) Provo River - HUC 16020101;
 - (xxi) Kimball Creek - HUC 160201020101;
 - (xxii) Big Dutch Hollow/East Canyon Creek - HUC 160201020103;
 - (xxiii) Silver Creek - HUC 160201010403; and
 - (xxiv) Toll Canyon/East Canyon Creek - HUC 160201020102.
 - (w) Tooele County - stocking is prohibited in the following areas:
 - (i) Toms Creek - HUC 160203060201;
 - (ii) Goshute Canyon - HUC 160203060202;
 - (iii) Eightmile Wash - HUC 160203060203;
 - (iv) Indian Farm Creek - HUC 160203060204;
 - (v) Willow Spring Wash HUC 160203060205;
 - (vi) Willow Canyon - HUC 160203080104;
 - (vii) Bettridge Creek - HUC 160203080106;
 - (viii) East Creek/East Deep Creek - HUC 160203060806;
 - (ix) East Deep Creek - HUC 160203060807;
 - (x) West Deep Creek - HUC 160203060808;
 - (xi) Gullmette Gulch/Deep Creek - HUC 160203060902;
 - (xii) Pony Express Canyon/Deep Creek - HUC 160203060904;
 - (xiii) Badlands - HUC 160203060905;
 - (xiv) White Sage Flat/Deep Creek - HUC 160203060907;
 - (xv) Lower Fish Springs Wash - HUC 160203060403;
 - (xvi) Fish Springs - HUC 160203060405;

- (xvii) Wilson Health Springs - HUC 160203060407;
- (xviii) East Government Creek - HUC 160203040101;
- (xix) Vernon Creek - HUC 160203040102; and
- (xx) Faust Creek - HUC 160203040105.
- (x) Uintah County - stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (y) Utah County - stocking is prohibited in the following areas:
 - (i) Starvation Creek - HUC 160202020101;
 - (ii) Upper Soldier Creek - HUC 160202020102;
 - (iii) Tie Fork - HUC 160202020103;
 - (iv) Middle Soldier Creek - HUC 160202020105;
 - (v) Lake Fork - HUC 160202020106;
 - (vi) Lower Soldier Creek - HUC 160202020107;
 - (vii) Upper Thistle Creek - HUC 160202020202;
 - (viii) Nebo Creek - HUC 160202020203;
 - (ix) Middle Thistle Creek - HUC 160202020204;
 - (x) Lower Thistle Creek - HUC 160202020205;
 - (xi) Sixth Water Creek - HUC 160202020301;
 - (xii) Cottonwood Canyon - HUC 160202020302;
 - (xiii) Fifth Water Creek - HUC 160202020303;
 - (xiv) Upper Diamond Fork - HUC 160202020304;
 - (xv) Wanrhodes Canyon - HUC 160202020305;
 - (xvi) Middle Diamond Fork - HUC 160202020306;
 - (xvii) Lower Diamond Fork - HUC 160202020307;
 - (xviii) Headwaters Left Fork Hobble Creek - HUC 160202020401;
 - (xix) Headwaters Right Fork Hobble Creek - HUC 160202020402;
 - (xx) Outlet Left Fork Hobble Creek - HUC 160202020403;
 - (xxi) Outlet Right Fork Hobble Creek - HUC 160202020404;
 - (xxii) Upper Spanish Fork Creek - HUC 160202020501;
 - (xxiii) Middle Spanish Fork Creek - HUC 160202020502;
 - (xxiv) Petetneet Creek - HUC 160202020601;
 - (xxv) Spring Creek - HUC 160202020602;
 - (xxvi) Beer Creek - HUC 160202020603;
 - (xxvii) Big Spring Hollow/South Fork Provo River - HUC 160202030502;
 - (xxviii) Pole Creek/Salt Creek - HUC 160202010104;
 - (xxix) Middle American Fork Canyon - HUC 160202010802;
 - (xxx) Mill Fork - HUC 160202020104; and
 - (xxxi) Upper American Fork Canyon - HUC 160202010801.
 - (z) Wasatch County - stocking is prohibited in the following areas:
 - (i) Willow Creek/Strawberry River - HUC 140600040101;
 - (ii) Clyde Creek/Strawberry River - HUC 140600040102;
 - (iii) Indian Creek - HUC 140600040104;
 - (iv) Trout Creek/Strawberry River - HUC 140600040105;
 - (v) Soldier Creek/Strawberry River - HUC 140600040106;
 - (vi) Willow Creek - HUC 140600040301;
 - (vii) Current Creek Reservoir - HUC 140600040401;
 - (viii) Little Red Creek - HUC 140600040402;
 - (ix) Outlet Current Creek - HUC 140600040403;
 - (x) Water Hollow/Current Creek - HUC 140600040404;
 - (xi) Headwaters West Fork Duchesne River - HUC 140600030101;
 - (xii) Little South Fork Provo River - HUC 160202030201;
 - (xiii) Bench Creek/Provo River - HUC 160202030202;
 - (xiv) Lady Long Hollow/Provo River - HUC 160202030203;
 - (xv) Charcoal Canyon/Provo River - HUC 160202030204;

- (xvi) Drain Tunnel Creek - HUC 160202030301;
 (xvii) Lake Creek - HUC 160202030302;
 (xviii) Center Creek - HUC 160202030303;
 (xix) Cottonwood Canyon/Provo River - HUC 160202030304;
 (xx) Snake Creek - HUC 160202030305;
 (xxi) Spring Creek/Provo River - HUC 160202030306;
 (xxii) Daniels Creek - HUC 160202030401;
 (xxiii) Upper Main Creek - HUC 160202030403;
 (xxiv) Lower Main Creek - HUC 160202030404;
 (xxv) Deer Creek Reservoir-Provo River - HUC 160202030405;
 (xxvi) Provo Deer Creek - HUC 160202030501;
 (xxvii) Little Hobble Creek - HUC 160202030402;
 (xxviii) Mill Hollow/South Fork Provo River - HUC 160202030104; and
 (xxix) Mud Creek - HUC 140600040103.
 (aa) Washington County - stocking is prohibited in the following areas:
 (i) Ash Creek - HUC 150100080405;
 (ii) Beaver Dam Wash - HUC 15010010;
 (iii) Laverkin Creek - HUC 150100080302;
 (iv) Leeds Creek - HUC 150100080906;
 (v) Baker Dam Reservoir/Santa Clara River - HUC 150100080704;
 (vi) Tobin Wash - HUC 150100080802;
 (vii) Sand Cove Wash - HUC 150100080801;
 (viii) Manganese Wash/Santa Clara River - HUC 150100080804;
 (ix) Wittwer Canyon/Santa Clara River - HUC 150100080808;
 (x) Cove Wash/Santa Clara River - HUC 150100080809;
 (xi) Moody Wash - HUC 150100080603;
 (xii) Upper Moody Wash - HUC 150100080602;
 (xiii) Magotsu Creek - HUC 150100080704;
 (xiv) South Ash Creek - HUC 150100080405);
 (xv) Water Canyon - HUC 150100080701);
 (xvi) Chinatown Wash/Virgin River - HUC 150100080508;
 (xvii) Lower Gould Wash - HUC 150100080508;
 (xviii) Grapevine Wash/Virgin River - HUC 150100080903;
 (xix) Cottonwood Wash/Virgin River - HUC 150100080909;
 (xx) Middleton Wash/Virgin River - HUC 150100080910;
 (xxi) Lower Fort Pierce Wash - HUC 150100080605;
 (xxii) Atkinville Wash - HUC 150100080303;
 (xxiii) Lizard Wash - HUC 150100080302;
 (xxiv) Val Wash/Virgin River - HUC 150100080307;
 (xxv) Bulldog Canyon - HUC 150100080310; and
 (xxvi) Fort Pierce Wash - HUC 15010009.
 (bb) Wayne County - no areas closed to stocking fertile rainbow trout.
 (cc) Weber County - stocking is prohibited in the following areas:
 (i) North Fork Ogden River - HUC 16020102;
 (ii) Middle Fork Ogden River and Gertsen Creek - HUC 16020102; and
 (iii) South Fork Ogden River and Gertsen Creek - HUC 16020102.

R657-59-17. Division Authority to Restrict Private Fish Ponds.

(1)(a) Stocking and maintaining aquaculture products in private fish ponds pursuant to this rule is a conditional privilege that is subject to unilateral modification or termination by the division or other competent legal authority.

(b) Those who establish and maintain private fish ponds

under this rule do so with the understanding that the laws and regulations governing private fish ponds are subject to change and that such changes may require:

(i) discontinuation of stocking particular species, strains, or reproductive capabilities of aquaculture product in the pond;

(ii) partial or complete depopulation of the aquaculture product in the pond;

(iii) modifications in screen requirements and other structural elements associated with the pond; or

(iv) new restrictions and requirements in connection with operating the pond and maintaining the aquaculture product within it.

(2) The division may unilaterally restrict a private fish pond operating with or without a certificate of registration or exemption certificate from receiving or possessing particular species, strains and reproductive capabilities of aquaculture product previously authorized when stocking or continued possession of the product in the pond:

(a) violates any federal, state or local law or any agreement between the state and another party;

(b) negatively impacts native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(c) poses an identifiable adverse threat to other wildlife species or their habitat; or

(d) poses an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives.

(3) Any costs or losses incurred as the result of future modifications to this rule or the operational status of a private fish pond made pursuant to this section, including terminations and depopulations, shall be borne exclusively by the owner, lessee or operator of the private fish pond.

KEY: wildlife, aquaculture, fish

August 21, 2012

Notice of Continuation August 5, 2013

23-15-9

23-15-10

R657. Natural Resources, Wildlife Resources.**R657-60. Aquatic Invasive Species Interdiction.****R657-60-1. Purpose and Authority.**

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

R657-60-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-101.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" means to:

(i) Self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, mussels and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August; 18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; or

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors.

(c) "Detects or suspects" means visually identifying:

(i) a veliger Dreissena mussel through microscopy and confirming the identity of the organism as a Dreissena mussel through two independent polymerase chain reaction (PCR) tests; or

(ii) a juvenile or adult Dreissena mussel.

(d) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(e) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(f) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(g) "Facility" means a structure that is located within or adjacent to a water body.

(h) "Infested water" includes all the following:

(i) all coastal and inland waters in:

(A) Colorado;

(B) California;

(C) Nevada;

(D) Arizona;

(E) all states east of Montana, Wyoming, Colorado, and New Mexico;

(F) the provinces of Ontario and Quebec Canada; and

(G) Mexico;

(ii) Sand Hollow Reservoir in Washington County, Utah; and

(iii) other waters established by the Wildlife Board and published on the DWR website.

(i) "Juvenile or adult Dreissena mussel" means a

macroscopic Dreissena mussel that is not a veliger.

(j) "Veliger" means a microscopic, planktonic larva of Dreissena mussel.

(k) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.

(l) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(m) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or pipeline.

(n) "Water supply system" does not include a water body.

R657-60-3. Possession of Dreissena Mussels.

(1) Except as provided in Subsections R657-60-3(2) and R657-60-5(2), a person may not possess, import, ship, or transport any Dreissena mussel.

(2) Dreissena mussels may be imported into and possessed within the state of Utah with prior written approval of the Director of the Division of Wildlife Resources or a designee.

R657-60-4. Reporting of Invasive Species Required.

(1) A person who discovers a Dreissena mussel within this state or has reason to believe a Dreissena mussel may exist at a specific location shall immediately report the discovery to the division.

(2) The report shall include the following information:

(a) location of the Dreissena mussels;

(b) date of discovery;

(c) identification of any conveyance or equipment in which mussels may be held or attached; and

(d) identification of the reporting party with their contact information.

(3) The report shall be made in person or in writing:

(a) at any division regional or headquarters office or;

(b) to the division's toll free hotline at 1-800-662-3337; or

(c) on the division's website at www.wildlife.utah.gov/law/hsp/pf.php.

R657-60-5. Transportation of Equipment and Conveyances That Have Been in Infested Waters.

(1) The owner, operator, or possessor of any equipment or conveyance that has been in an infested water or in any other water subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water shall:

(a) immediately drain all water from the equipment or conveyance at the take out site, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment; and

(b) immediately inspect the interior and exterior of the equipment or conveyance at the take out site for the presence of Dreissena mussels.

(2) If all water in the equipment or conveyance is drained and the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment and conveyance are free from mussels or shelled organisms, fish, plants and mud, the equipment and conveyance may be transported in or through the state directly from the take out site to the location where it will be:

(a) professionally decontaminated; or

(b) stored and self-decontaminated.

(3) If all the water in the equipment or conveyance is not drained or the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment or conveyance has attached mussels or shelled organisms, fish, plants, or mud, the equipment and conveyance shall not be moved from the take

out site until the division is contacted and written or electronic authorization received to move the equipment or conveyance to a designated location for professional decontamination.

(4) A person shall not place any equipment or conveyance into a water body or water supply system in the state without first decontaminating the equipment and conveyance when the equipment or conveyance in the previous 30 days has been in:

(a) an infested water; or

(b) other water body or water supply system subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water.

R657-60-6. Certification of Decontamination.

(1) The owner, operator or possessor of a vessel desiring to launch on a water body in Utah must:

(a) verify the vessel and any launching device, in the previous 30 days, have not been in an infested water or in any other water subject to closure order under R657-60-8 or control plan under R656-60-9 that requires decontamination of conveyances and equipment upon leaving the water; or

(b) certify the vessel and launching device have been decontaminated.

(2) Certification of decontamination is satisfied by:

(a) previously completing self-decontamination since the vessel and launching device were last in a water described in Subsection (1)(a) and completely filling out and dating a decontamination certification form which can be obtained from the division; or

(b) providing a signed and dated certificate by a division approved professional decontamination service verifying the vessel and launching device were professionally decontaminated since the vessel and launching device were last in a water described in Subsection (1)(a).

(3) Both the decontamination certification form and the professional decontamination certificate, where applicable, must be signed and placed in open view in the window of the launching vehicle prior to launching or placing the vessel in a body of water.

(4) It is unlawful under Section 76-8-504 to knowingly falsify a decontamination certification form.

R657-60-7. Wildlife Board Designations of Infested Waters.

(1) The Wildlife Board may designate a geographic area, water body, facility, or water supply system as infested with Dreissena mussels pursuant to Section 23-27-102 and 23-27-401 without taking the proposal to or receiving recommendations from the regional advisory councils.

(a) The Wildlife Board may designate a particular water body, facility, or water supply system within the state as infested with Dreissena mussels when a juvenile or adult mussel from the subject water is visually identified as a Dreissena mussel and that identity is confirmed by two independent positive polymerase chain reaction (PCR) tests.

(b) The Wildlife Board may designate a particular water body, facility, or water supply system outside the state as infested with Dreissena mussels when a veliger, juvenile or adult Dreissena mussel is detected by the state having jurisdiction over the water or when the Wildlife Board has credible evidence suggesting the presence of a Dreissena mussel.

(c) Where the number of infested waters in a particular area is numerous or growing, or where surveillance activities or infestation containment actions are deficient, the Wildlife Board may designate geographic areas as infested with Dreissena mussels.

R657-60-8. Closure Order for a Water Body, Facility, or Water Supply System.

(1)(a) If the division detects or suspects a Dreissena

mussel is present in a water body, facility, or water supply system in the state, the division director or designee may, with the concurrence of the executive director, issue an order closing the water body, facility, or water supply system to the introduction or removal of conveyances or equipment.

(b) The director shall consult with the controlling entity of the water body, facility, or water supply system when determining the scope, duration, level and type of closure that will be imposed in order to avoid or minimize disruption of economic and recreational activities.

(c) A closure order may:

(i) close the water entirely to conveyances and equipment;

(ii) authorize the introduction and removal of conveyances and equipment subject to the decontamination requirements in R657-60-2(2)(b) and R657-60-5; or

(iii) impose any other condition or restriction necessary to prevent the movement of Dreissena mussels into or out of the subject water.

(iv) a closure order may not restrict the flow of water without the approval of the controlling entity.

(2)(a) A closure order issued pursuant to Subsection (1) shall be in writing and identify the:

(i) water body, facility, or water supply system subject to the closure order;

(ii) nature and scope of the closure or restrictions;

(iii) reasons for the closure or restrictions;

(iv) conditions upon which the order may be terminated or modified; and

(v) sources for receiving updated information on the status of infestation and closure order.

(b) The closure order shall be mailed, electronically transmitted, or hand delivered to:

(i) the controlling entity of the water body, facility, or water supply system; and

(ii) any governmental agency or private entity known to have economic, political, or recreational interests significantly impacted by the closure order; and

(iii) any person or entity requesting a copy of the order.

(c) The closure order or its substance shall further be:

(i) posted on the division's web page; and

(ii) published in a newspaper of general circulation in the state of Utah or the affected area.

(3) If a closure order lasts longer than seven days, the division shall provide the controlling entity and post on its web page a written update every 10 days on its efforts to address the Dreissena mussel infestation.

(a) The 10 day update notice cycle will continue for the duration of the closure order.

(4)(a) Notwithstanding the closure authority in Subsection (1), the division may not unilaterally close or restrict a water supply system infested with Dreissena mussels where the controlling entity has prepared and implemented a control plan in cooperation with the division that effectively eradicates or controls the spread of Dreissena mussels from the water supply system.

(b) The control plan shall comply with the requirements in R657-60-9.

(5) Except as authorized by the Division in writing, a person may not violate any provision of a closure order.

R657-60-9. Control Plan Required.

(1) The controlling entity of a water body, facility, or water supply system may develop and implement a control plan in cooperation with the division prior to infestation designed to:

(a) avoid the infestation of Dreissena mussels; and

(b) control or eradicate an infestation of Dreissena mussels that might occur in the future.

(2) A pre-infestation control plan developed consistent with the requirements in Subsection (3) and approved by the

division will eliminate or minimize the duration and impact of a closure order issued pursuant to Section 23-27-303 and R657-60-8.

(3) If the division detects or suspects a Dreissena mussel is present in a water body, facility, or water supply system in the state that does not have an approved control plan and issues a closure order, the controlling entity shall cooperate with the division in developing and implementing a control plan to address the:

- (a) scope and extent of the infestation;
- (b) actions proposed to control the pathways of spread of the infestation;
- (c) actions proposed to control or eradicate the infestation;
- (d) methods to decontaminate the water body, facility, or water supply system, if possible;
- (e) actions required to systematically monitor the level and extent of the infestation; and
- (f) requirements and methods to update and revise the plan with scientific advances.

(4) Any post-infestation control plan prepared pursuant to Subsection (3) shall be approved by the Division before implementation.

(5) A control plan prepared pursuant to this Section may require that all conveyances and equipment entering or leaving the subject water to comply with the decontamination requirements in R657-60-2(2)(b) and R657-60-5.

(6) Except as authorized by the Division and the controlling entity in writing, a person may not violate any provision of a control plan.

R657-60-10. Procedure for Establishing a Memorandum of Understanding with the Utah Department of Transportation.

(1) The division director or designee shall negotiate an agreement with the Utah Department of Transportation for use of ports of entry for detection and interdiction of Dreissena Mussels illegally transported into and within the state. Both the Division of Wildlife Resources and the Department of Transportation must agree upon all aspects of Dreissena Mussel interdiction at ports of entry.

(2) The Memorandum shall include the following:

- (a) methods and protocols for reimbursing the department for costs associated with Dreissena Mussel interdiction;
- (b) identification of ports of entry suitable for interdiction operations;
- (c) identification of locations at a specific port of entry suitable for interdiction operations;
- (d) methods and protocols for disposing of wastewater associated with decontamination of equipment and conveyances;
- (e) dates and time periods suitable for interdiction efforts at specific ports of entry;
- (f) signage notifying motorists of the vehicles that must stop at the port of entry for inspection;
- (g) priorities of use during congested periods between the department's port responsibilities and the division's interdiction activities;
- (h) methods for determining the length, location and dates of interdiction;
- (i) training responsibilities for personnel involved in interdiction activities; and
- (j) methods for division regional personnel to establish interdiction efforts at ports within each region.

R657-60-11. Conveyance or Equipment Detainment.

(1) To eradicate and prevent the infestation of a Dreissena mussel, the division may:

- (a) temporary stop, detain, inspect, and impound a conveyance or equipment that the division reasonably believes

is in violation of Section 23-27-201 or R657-60-5;

(b) order a person to decontaminate a conveyance or equipment that the division reasonably believes is in violation of Section 23-227-201 or R657-60-5.

(2) The division, a port-of-entry agent or a peace officer may detain or impound a conveyance or equipment if;

(a) the division, agent, or peace officer reasonably believes that the person transporting the conveyance or equipment is in violation of Section 23-27-201 or R657-60-5.

(3) The detainment or impoundment authorized by Subsection (2) may continue for;

- (a) up to five days; or
- (b) the period of time necessary to:
 - (i) decontaminate the conveyance or equipment; and
 - (ii) ensure that a Dreissena mussel is not living on or in the conveyance or equipment.

R657-60-12. Penalty for Violation.

(1) A violation of any provision of this rule is punishable as provided in Section 23-13-11.

(2) A violation of any provision of a closure order issued under R657-60-8 or a control plan created under R657-60-9 is punishable as a criminal infraction as provided in Section 23-13-11.

KEY: fish, wildlife, wildlife law

August 9, 2010

Notice of Continuation August 5, 2013

23-27-401

23-14-18

23-14-19

R657. Natural Resources, Wildlife Resources.**R657-65. Urban Deer Control.****R657-65-1. Authority and Purpose.**

(1) This rule is promulgated under authority of Sections 23-14-3, 23-14-18, and 23-14-19.

(2) The purpose of this rule is to establish and evaluate a two year pilot program with Bountiful City, Utah and Highland City, Utah that enables each to design and administer a control plan for the lethal and non-lethal removal of resident deer damaging private property or threatening public safety within the municipality.

R657-65-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Deer" means wild mule deer (*Odocoileus hemionus*) living in nature and does not include privately owned, captive deer.

(b) "Division" means the Utah Division of Wildlife Resources.

(c) "Municipality" means Bountiful City in Davis County, Utah and Highland City in Utah County, Utah.

(d) "Urban deer control plan" means a document designed, created, and administered by an authorized municipality that establishes the protocols and methodologies it will pursue to control and mitigate private property damage or public safety threats caused by mule deer within its incorporated boundaries.

R657-65-3. Authorization to Create and Administer an Urban Deer Control Plan.

(1) A municipality with a resident mule deer population that is significantly damaging private property or threatening public safety within its boundaries may request the Division for a certificate of registration ("COR") to design, create, and administer an urban deer control plan.

(2) The Division may issue an urban deer control plan COR to a municipality, provided:

(a) the application is filed by a municipality;

(b) resident mule deer are collectively causing significant damage to private property or threatening public safety within the municipality's incorporated boundaries;

(c) it has enacted an ordinance prohibiting the feeding of deer, elk, and moose;

(d) it has general liability insurance in the amount of \$1,000,000.00 or more that covers liability claims that may arise from designing, creating, and administering an urban deer control plan; and

(e) it agrees, without waiving immunity or any other limitation or provision in the Utah Governmental Immunity Act, Utah Code Sections 63G-7-101 through 63G-7-904, to hold harmless and indemnify the Division against any claims or damages arising from its deer removal activities undertaken pursuant to the urban deer control plan COR, except for any allocated share of fault and damages attributable to the Division's actual involvement in deer removal activities on the ground.

R657-65-4. COR Authorities and Limitations.

(1) An urban deer control plan COR issued to a municipality authorizes it to design, create, and administer an urban deer control plan consistent with the following authorities and limitations.

(2) The COR authorizes the municipality to:

(a) prescribe and employ lethal and non-lethal methods of take to control deer, provided the methods are otherwise in compliance with state and federal law;

(b) utilize baiting to facilitate safe and effective deer removal activities;

(c) select and supervise individuals to perform specified deer removal activities, provided the municipality:

(i) issues to each individual authorized to remove deer a written authorization and tag that:

(A) is on a form prescribed by the Division;

(B) is signed by the city manager and recipient;

(C) identifies the recipient's name, address, date of birth, gender, height, weight, and eye color;

(D) describes the locations, time periods, methods of take, and related activities authorized by the municipality; and

(E) includes a detachable tag consistent with the requirements in Section 23-20-30;

(d) allow a single individual to take more than one deer; and

(e) permit spotlighting to facilitate non-lethal deer removal or carcass recovery efforts.

(3) The municipality will:

(a) require individuals authorized to lethally remove deer to:

(i) tag the carcass consistent with Section 23-20-30; and

(ii) comply will all federal, state, and local laws pertaining to the possession, use, and discharge of a dangerous weapon; and

(b) take measures to ensure that:

(i) deer carcasses are salvaged consistent with Section 23-20-8 and disposed of as provided by law;

(ii) viscera is removed from the kill site and disposed of as provided by law; and

(iii) antlers of lethally removed deer are promptly surrendered to the Division and not retained by the municipality or the person that takes the animal.

(4) The municipality will not:

(a) capture a deer for release outside municipal boundaries without a written capture and relocation plan prepared in coordination with and approved by the Division;

(b) sell or barter a deer carcass or otherwise use it for pecuniary gain without prior written approval from the Division;

(c) collect a fee or compensation from a person or entity it authorizes to remove deer from its incorporated boundaries, unless the fee or compensation is:

(i) \$50 or less;

(ii) used exclusively to recoup the actual costs incurred by the municipality in:

(A) selecting and qualifying the person; or

(B) butchering and processing lethally removed deer for donation; and

(iii) approved by the Division in writing;

(d) undertake or authorize deer removal activities outside:

(i) incorporated municipal boundaries or any unincorporated areas approved by the Division and the county; or

(ii) the general time frame imposed by the Division;

(e) remove more deer, collectively or by gender, than authorized by Division; or

(f) authorize the discharge of firearms or archery equipment for deer removal:

(i) between one half hour after official sunset and one half hour before official sunrise; or

(ii) in violation of federal, state, or local laws.

R657-65-5. Urban Deer Control Plan.

(1) Upon receipt of an urban deer control plan COR, the municipality must prepare an urban deer control plan consistent with this Subsection prior to undertaking any deer removal activities.

(2) The urban deer control plan will address and prescribe, at a minimum, the:

(a) lethal and non-lethal methods of take that may be used

to remove deer and the conditions under which each may be employed;

(b) conditions and restrictions under which baiting and spotlighting may be used to facilitate deer removal;

(c) persons eligible to perform deer removal activities and the requirements imposed on them;

(d) locations and time periods where specified types of deer removal activities may be employed or authorized;

(e) requirements for tagging deer carcasses;

(f) protocols for carcass removal and disposal;

(g) procedures for promptly returning to the Division all antlers of lethally removed deer; and

(h) procedures for obtaining Division input and approval on live capture and relocation projects.

(3) All aspects of the plan must be consistent with the authorizations and limitations imposed in this rule and the COR.

(4)(a) The municipality will solicit and consider input in the formulation and development of the urban deer control plan from:

(i) the Division;

(ii) the public;

(iii) interested businesses and organizations; and

(iv) local, state, and federal governments.

(b) The Division may provide technical assistance to the municipality in preparing the urban deer control plan.

(c) After formulating a draft plan, the municipality will hold a public meeting to take and consider input on the draft before finalizing or implementing it.

(5) The municipality will assume full responsibility for:

(a) all costs associated with designing, establishing, implementing, and operating the urban deer control plan and all its associated activities; and

(b) for the acts and omissions of its officers, employees, agents, contractors, and licensees in designing, preparing, and implementing its urban deer control plan and undertaking the activities authorized thereunder.

R657-65-6. COR Term and Termination.

(1) An urban deer control plan COR issued under this rule will remain valid for two years from the date of issuance or until August 31, 2015, whichever is less.

(2)(a) A municipality may unilaterally withdraw an urban deer control plan and terminate the COR without cause upon 30 days advance written notice to the Division.

(b) Upon termination of the COR, the municipality and its officers, employees, agents, contractors, and licensees must cease all deer removal activities formally authorized by the COR.

R657-65-7. Violations.

Pursuant to Section 23-19-9, the division may suspend, restrict, or deny an urban deer control plan COR for any intentional, knowing, or reckless violation of the Wildlife Code, this rule, or the terms of the COR.

R657-65-8. Sunset.

This rule sunsets on August 31, 2015 and all COR's and other authorizations issued hereunder will terminate by operation of law and cease having further legal effect.

**KEY: wildlife, certificate of registration
August 8, 2013**

23-14-3
23-14-18
23-14-19

R708. Public Safety, Driver License.**R708-21. Third-Party Testing.****R708-21-1. Authority.**

This rule is authorized by Section 53-3-104.

R708-21-2. Purpose.

The purpose of this rule is to establish standards and procedures for Third-party Testers and Third-party Examiners who enter into an agreement with the State, to administer skills tests to commercial drivers.

R708-21-3. Definitions.

(1) Definitions used in this rule are found in Section 53-3-102.

(2) In addition:

(a) "act involving moral turpitude" means conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another property;

(b) "designated representative" means a person identified by an organization, who is an officer, owner, partner or employee of the organization and who is authorized by the organization to comply with Third-party Testing Program requirements;

(c) "established business" means any company that has been issued a license by a state, county or city licensing agency to conduct business;

(d) "probation" means action taken by the department, which includes a period of close supervision as determined by the division;

(e) "revocation" means the permanent removal of certification of a Third-party Tester or Third-party Examiner;

(f) "state" means the State of Utah;

(g) "third-party examiner" means a person who has completed, passed and maintains the required training to administer the skills tests to commercial drivers; and

(h) "third-party tester" means a person, an agency of this state, an employer, a private driver training facility or other private institution, or a department, agency or entity of local government with whom the state has an agreement to administer skills tests to commercial drivers.

R708-21-4. Requirements for Application, Certification and Renewal of Certification for a Third-party Tester.

(1) Application for an original or renewal Third-party Tester certification shall be made on a form furnished by the division, and shall include:

(a) name of Third-party Tester;

(b) address of Third-party Tester;

(c) number of years Third-party Tester has been in business;

(d) names of all Third-party Examiners;

(e) addresses of all testing sites;

(f) name of the designated representative; and

(g) copy of business license.

(2) Upon receipt of the application, fingerprint card and required fees, the division shall schedule an appointment with the Third-party Tester to determine eligibility, establish test routes, schedule instruction and provide forms.

(3) A written agreement shall be made with the state to conduct skills test as required by Federal regulations established in 49 CFR 383.75. The agreement shall contain the following provisions:

(a) allow the Federal Motor Carrier Safety Administration (FMCSA) or its representative, and/or the division to conduct random examinations, inspections and audits without prior notice;

(b) allow the division to conduct on-site inspections annually or when deemed necessary by the division;

(c) require all Third-party Examiners receive training approved by the division which requires them to conduct skills tests in compliance with the FMCSA minimum standards; and

(d) require at least one of the following on an annual basis:

(i) a division representative take the tests actually administered by the Third-party Examiner as if the division representative were a test applicant;

(ii) the division test a sample of drivers who were examined by the Third-party Examiner to compare pass/fail results; or

(iii) the division co-score along with the Third-party Examiner during CDL skills test to compare pass/fail.

(4) The Third-Party tester shall:

(a) have an established business for a minimum of two years, or employ a Third-party Examiner that has been certified the previous two years under R708-21-5;

(b) maintain a current business license required by the municipality or county;

(c) have at least one qualified and approved Third-party Examiner;

(d) require that Third-party Examiners:

(i) administer at least ten CDL skills tests in the year preceding the renewal of the Third-party Tester application; or

(ii) be observed by the division representative administering at least one CDL skills test in the proper manner;

(e) name a designated representative(s) that will sign signature cards for new employees and withdraw the authority of employees that are no longer certified to test for the company;

(f) not be permitted to engage the service of an employee of the division as an examiner, agent, or employee; and

(g) submit a fingerprint card and a check or money order to the division, made payable to the Utah Bureau of Criminal Identification, to cover the cost associated with a criminal history background check and FBI check.

(5) Certification shall be valid for a period of 12 months. No later than one month prior to expiration of certification, the Third-party Tester shall submit a renewal application to the division.

R708-21-5. Requirements for Application, Certification and Renewal of Certification for a Third-party Examiner.

(1) An application for an original or renewal Third-party Examiner certification shall be made on a form furnished by the division, and shall include the following:

(a) name of Third-party Tester;

(b) address of Third-party Tester;

(c) name of Third-party Examiner;

(d) residential address of Third-party Examiner;

(e) telephone number and email address of Third-party Examiner; and

(f) signature and date of Third-party Examiner.

(2) All Third-party Examiners shall be sponsored by a Third-party Tester, who shall be responsible for all tests administered by the Third-party Examiner.

(3) An applicant for Third-party Examiner shall comply with the following requirements:

(a) have and maintain a valid driver's license with no suspensions, revocations, cancellations or disqualifications within one year prior to application;

(b) have at least three years driving experience;

(c) submit a fingerprint card and a check or money order to the division, made payable to the Utah Bureau of Criminal Identification, to cover the cost associated with a criminal history background check and FBI check;

(d) have the physical strength and agility to physically

enter and exit commercial vehicles unassisted;

(e) complete the approved training by the division and pass the final examination with a minimum score of 80%. Third-party Examiners need to be aware that any training they receive from private or other organizations may require a training fee;

(f) schedule a time, within one year of training with the division representative, to demonstrate his/her ability to perform the skills tests according to 49 CFR 383.75 (g) and 49 CFR 383.75 (h), in an actual test setting. Upon approval from the division representative, the examiner may begin testing. Failure to comply with this portion of this certification process will result in the examiner having to complete the approved training as described in R708-21-5 (3)(e); and

(g) upon completion of training, Third-party Examiners shall be issued a certificate of completion. The division will file and maintain a copy of the certificate of completion in the Third-party Tester file.

(4) All authorized Third-party Examiners shall be required to sign an agreement verifying that they have read and understand the required rules and training materials.

(5) Upon application for recertification a Third-party Examiner shall meet the requirements outlined in Subsections R708-21-5(1) through R708-21-5(4) in addition to the following:

(a) administer at least ten CDL skills tests to different applicants in the year preceding the renewal of the Third-party Tester application; or

(b) be observed by the division representative administering at least one CDL skills tests in accordance with 49 CRF 383.75(g) and 49 CFR 383.75(h).

R708-21-6. Requirements for Designated Representative.

(1) A designated representative is responsible for overseeing the Third-party Tester and Examiners. The designated representative shall be the liaison between division representatives and Third-party Examiners.

(2) A designated representative shall:

(a) maintain personnel files for all Third-party Examiners assigned to their company;

(b) notify the division in writing within 10 calendar days of any change to a Third-party Examiner driving status;

(c) maintain and update all Third-party Examiners signature cards;

(d) notify the division in writing within 30 calendar days of a change to a Third-party Tester or Examiners address;

(e) make application for renewal of a Third-party Tester certificate at least one month prior to expiration date;

(f) maintain security of all CDL score sheets and personal data noted on the CDL score sheets;

(g) ensure all CDL test score sheets have been destroyed after 3 years.

R708-21-7. Skills Test Administration.

(1) Skills tests shall be conducted strictly in accordance with the provisions of these requirements and with current test instructions provided by the division 49 CFR 383.75, and the AAMVA training manual.

(a) Such instructions include information regarding:

(i) skills test content;

(ii) route selection/revision;

(iii) test forms;

(iv) examiner procedures; and

(v) administrative procedures.

(2) Tests shall be conducted:

(a) on test routes approved by the division;

(b) in a vehicle that is representative of the class and type of vehicle for which the CDL applicant seeks to be licensed, and for which the Third-party Examiner is qualified to test; and

(c) by using division approved content, forms and scoring procedures.

(3) Third-party Examiners shall test and certify only those CDL applicants who hold a valid Commercial Driver Instruction Permit and shall ensure adherence to the class, endorsements, restrictions and expiration dates listed on the permit.

(4) All Third-party Testers and Third-party Examiners shall schedule the skills tests on the division's web application at least 48 hours prior to administering the CDL Skills test.

R708-21-8. Processing CDL Skills Test.

(1) The division shall provide training and allow access to the divisions web service application used for scheduling skills tests and recording the results of the tests to:

(a) a certified Third-party Examiner; or

(b) a representative of the Third-party Tester that has met the requirements of R708-21-5(3)(c) and the division has reviewed and approved the results of the fingerprint and FBI background checks.

(2) The division shall supply an approved CDL skills test score sheet to authorized Third-party Testers for use when administering skills tests. The score sheet shall be filled out correctly and signed by both the Third-party Examiner and driver,

(a) Third-party Testers shall maintain all skill test score sheets for a period of three years after which they must be immediately destroyed by means of incineration or shred.

(b) Third-party Testers are responsible to ensure the security of all CDL score sheets and personal data collected on the CDL score sheets and the applicant.

(3) The score sheet shall include the following information:

(a) applicant's name and phone number;

(b) applicant's Utah Driver License number;

(c) description of the vehicle in which test was taken, including optional equipment;

(d) Gross Vehicle Weight Rating (GVWR);

(e) vehicle and trailer license plate numbers;

(f) class of license, restriction and/or endorsement tested for;

(g) start time, end time, and date test was administered;

(h) authorized Third-party Examiner name and assigned number;

(i) applicant's signature and date; and

(j) authorized Third-party Examiner's signature and date.

(4) The Third-party Examiner shall document all skills test results on the score sheet.

(5) The Third-party Examiner shall provide the completed skills test score sheet to the driver in a sealed envelope.

(6) The Third-party Examiner or Third-party Tester shall not withhold a passed skills test score sheet from an applicant that has successfully met the testing requirements.

(7) The Third-party Examiner shall enter the skills test results on the driver's record through the division web application within 48 hours of the test.

(8) Test results are only acceptable if testing was completed within the previous six months.

(9) The division shall accept the score sheet as proof the driver has completed one or more skills tests.

(10) As a result of the driver not completing or passing the skills test within six months of the original failed or incomplete test, the Third-party Examiner shall send the score sheet directly to the division representative.

R708-21-9. Inspection and Audit Process.

(1) During inspections the representative(s) designated by the Third-party Tester shall cooperate with the division or federal representative with respect to on-site inspections.

(2) On-site inspections shall be conducted to verify compliance with FMCSA guidelines and R708-21.

(3) The Third-party Tester shall maintain accurate driver testing records and must be able to furnish them upon request.

(4) Check rides may be made by any designated division representative to verify compliance with the state and federal minimum testing standards and may consist of:

(a) a division employee taking the skills test as administered by the Third-party Tester as if such employee was a test applicant;

(b) the division administering the skills tests to a sample of drivers who were previously examined by the Third-party Testers to determine if the check ride results are consistent with the Third-party Tester results; and

(c) the division co-score along with the Third-party Examiner during CDL skills test to compare pass/fail.

(5) A division representative shall prepare a written report of all inspections, check rides and audits. A copy of these reports shall be maintained by the division for ten years.

(6) The division shall send a renewal letter to the Third-party Tester indicating any problems, concerns or violations found during the audit with an action plan detailing how to correct the items identified.

R708-21-10. Notification of Accident.

If any Third-party Examiner is involved in an accident during the course of administering a skills test, the Examiner shall notify the division in writing within five days of the accident. The Third-party Examiner shall submit to the division a copy of the investigating law enforcement officer's accident report as soon as it is available.

R708-21-11. Advertising.

(1) No advertisement shall indicate in any way that a program can issue or guarantee the issuance of a CDL, or imply that the program can in any way influence the division in the issuance of a CDL, or imply that preferential or advantageous treatment from the division can be obtained.

(2) No Third-party Tester or Third-party Examiner shall solicit business directly or indirectly, or display or distribute any advertising material within 1,500 feet of a building in which driver licenses are issued to the public.

(3) No Third-party Tester or Third-party Examiner shall use any department or division logos, letterhead, or license recreations as part of their advertising.

R708-21-12. Grounds for Revocation, Probation or Denial to Issue or Renew Third-party Tester or Third-party Examiner Certification.

(1) A Third-party Tester or Third-party Examiner may be revoked, denied or placed on probation for any of the following reasons:

(a) failure to comply with any of the provisions of 49 CFR 383.75;

(b) failure to comply with any of the provisions of Section 53-3-407;

(c) failure to comply with any of the provisions of R708-21;

(d) falsification of any records or other required information relating to the Third-party Tester program;

(e) commission of any act that compromises the integrity of the Third-party Tester Program Commercial Motor Vehicle Safety Act, 1986;

(f) failure to permit and cooperate with the division or federal representative to inspect the testing routes, testing sites or score sheets issued to the Third-party Tester; and

(g) conviction of any crime involving dishonesty, deception, theft, or an act involving moral turpitude by a Third-party Tester or Third-party Examiner.

(2) In determining whether revocation, denial or probation of a certification is appropriate, the division shall consider the third-party tester or third-party examiners involvement and severity of the violation(s).

(3) If a Third-party Examiner certificate is revoked under the emergency provisions of Section 63G-4-502, and the Third-party Tester certificate is valid, the Third-party Tester may continue conducting CDL driving skills tests provided:

(a) the Third-party Examiner is no longer employed by the Third-party Tester;

(b) a Third-party Examiner with a valid certificate is employed by the Third-party Tester;

(c) testing shall not compromise public safety; and

(d) the Third-party Tester is found to not knowingly have allowed a Third-party Examiner to conduct tests that violate state or federal laws, or any provision of R708-21.

(4) Following cancellation of the Third-party Tester certification, the Third-party Tester shall promptly return all CDL skills test documents. Documentation includes at a minimum:

(a) CDL Examiner manual;

(b) used and blank score sheets; and

(c) Third-party Examiner certificates.

R708-21-13. Adjudicative Proceedings.

(1) All adjudicative proceedings shall be conducted informally as provided in Section 63G-4-202.

(2) The division shall initiate agency action against a Third-party Tester or Third-party Examiner with a notice of agency action in accordance with Section 63G-4-201.

(3)(a) A Third-party Tester or Third-party Examiner who receives a notice of agency action indicating that the division intends to deny, suspend or revoke a permit or a certificate, may request a hearing by filing a written request for hearing with the division within ten calendar days from the date of the notice of agency action.

(b) If a timely request for hearing is filed, the agency action shall be stayed until the division's hearing officer issues a written decision.

(c) A hearing shall be held before the division's hearing officer within 30 calendar days of the day that the division receives the written request for hearing, unless agreed to by the parties.

(d) At the hearing, Third-party Tester or Third-party Examiner shall have an opportunity to demonstrate why the division should not take agency action.

(e) The hearing officer shall issue a written decision within ten business days of the hearing in accordance with Section 63G-4-203.

(4) The written decision of the hearing officer shall constitute final agency action and is subject to judicial review in accordance with Section 63G-4-402.

KEY: motor vehicle safety, inspections

August 8, 2013

Notice of Continuation January 20, 2012

53-3-104

53-3-407.1

49 CFR 383.75

R708. Public Safety, Driver License.**R708-45. Renewal or Duplicate License for Utah Residents Temporarily Residing Out of State.****R708-45-1. Purpose.**

The purpose of this rule is to establish procedures whereby the division may renew or issue a duplicate regular license certificate to a Utah resident who is temporarily residing outside of the state.

R708-45-2. Authority.

This rule is authorized by Sections 53-3-104 and 53-3-205.

R708-45-3. Definitions.

Definitions in this rule are found in Section 53-3-102.

In addition:

(a) "DOD applicant" means a person who is a civilian employee of the United States Department of Defense that is stationed outside of the United States, or an immediate family member or dependent residing outside of the United States with such person who has applied for a renewal or duplicate Utah driver license;

(b) "DOS applicant" means a person who is a civilian employee of the United States State Department that is stationed outside of the United States, or an immediate family member or dependent residing outside of the United States with such person who has applied for a renewal or duplicate Utah driver license; and

(c) "military applicant" means a person who is ordered to active duty and stationed outside Utah in any of the armed forces of the United States, or an immediate family member or dependent residing outside of Utah with such person who has applied for a renewal or duplicate Utah driver license.

R708-45-4. Requirements to Renew or Obtain a Duplicate License.

(1) To be eligible to obtain a renewal or duplicate driver license under the provisions of this rule, an applicant shall:

- (a) be a resident of the state of Utah;
- (b) be temporarily residing outside the state of Utah; and
- (c) have a valid regular license certificate with a digitized driver license photo on file with the division.

(2) The driver record of the applicant shall not:

(a) contain evidence that demonstrates the applicant is a hazard to public safety within the five-year period preceding the application; or

(b) reflect expiration of more than a six-month period at the time the application is submitted to the division unless:

- (i) the applicant is a DOD applicant, DOS applicant or military applicant; and
- (ii) the license has not been suspended, disqualified, denied, revoked or cancelled by the division.

(3) An applicant is not eligible to renew or obtain a duplicate license under the provisions of this rule if:

- (a) the applicant holds a:
 - (i) commercial driver license;
 - (ii) limited term driver license; or
 - (iii) driving privilege card;
- (b) the applicant has previously renewed or obtained a duplicate license under the provisions of this rule, unless approved by the division director or designee;
- (c) the applicant has changed their name since the last Utah license was issued; or
- (d) the required license restrictions have changed since the last Utah license was issued.

R708-45-5. Renewal or Duplicate License Application.

(1) To apply for a renewal or duplicate license under the provisions of this rule, an applicant shall submit to the division:

- (a) a license application form, which can be obtained from

the division either online or through the mail;

- (b) verification pursuant to Section 53-3-205 of:

- (i) identity;
- (ii) legal presence;
- (iii) social security number; and
- (iv) Utah residency;

(c) a completed certificate of visual examination form which can be obtained from the division either online or through the mail, if the applicant is age 64 years and 6 months or older at the time of application;

(d) supporting documentation that establishes an applicant is a DOD applicant, DOS applicant or military applicant, if applicable;

(e) proof of successful completion of a certified Motorcycle Safety Foundation rider training course, if the applicant is a military applicant and is applying for an original motorcycle endorsement;

(f) written notice of the applicant's intent to apply for a renewal or duplicate license under the provisions of this rule; and

- (g) applicable fees.

(2) Upon receipt of a completed application packet, the division:

(a) shall review the materials to determine if the applicant is eligible for a renewal or duplicate license; and

(b) may request additional information to determine if the applicant is eligible for a renewal or duplicate license.

(3)(a) If the division determines that the applicant has met all of the requirements for a renewal or duplicate license, the division shall issue the license certificate to the applicant.

(b) The license certificate shall expire as provided in Section 53-3-205.

(4) If the division determines that the applicant does not meet the requirements for a renewal or duplicate license:

(a) the division shall issue a denial letter to the applicant that states the reasons for the denial; and

(b) the applicant may seek agency review as provided by Section 63G-4-301 by filing a written request for review within 30 calendar days after the issuance of the letter.

**KEY: renewal license, duplicate license, Utah resident temporarily out-of-state
August 8, 2013**

**53-3-104
53-3-205**

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**R722-900. Access to Bureau Records.****R722-900-1. Purpose.**

The purpose of this rule is to establish procedures whereby criminal justice agencies, qualified entities, and individuals may obtain access to bureau records.

R722-900-2. Authority.

This rule is authorized by Subsections 53-10-108(7) and (8).

R722-900-3. Definitions.

(1) Terms used in this rule are found in Section 53-10-102.

(2) In addition:

(a) "agency" means a criminal justice agency as defined in Subsection 53-10-102(9) and 28 U.S.C. Subsection 534(e), or a non-criminal entity authorized to access CJIS under federal law;

(b) "bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201;

(c) "CJIS" means the Criminal Justice Information System administered by the FBI;

(d) "entity" means an entity qualified to access criminal history information under state or federal law;

(e) "entity id" means an entity's unique identifier that is used to access criminal history information;

(f) "FBI" means the Federal Bureau of Investigation within the United States Department of Justice;

(g) "login id" means a unique identifier in UCJIS for a user or non-user;

(h) "misuse" means the access, use, disclosure, or dissemination of records for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity;

(i) "NCIC" means the National Crime Information Center;

(j) "non-user" means a person working for or with an agency, who does not have direct access to UCJIS but has indirect access to records, including individuals who may:

(i) access computer systems or programs used to access UCJIS files; or

(ii) have unrestricted access to a location containing UCJIS records or a computer with UCJIS access;

(k) "ORI" means originating agency identifier;

(l) "provider" means a law enforcement agency as defined in Subsection 53-1-102(1)(c), the Utah Attorney General's Office, a county attorney's office, a district attorney's office, or a city prosecutor's office;

(m) "records" means records created, maintained, or to which access is granted by the bureau, including criminal history information;

(n) "right of access program" means a program established under Subsection 53-10-108(8) in which a provider makes an individual's UCCH and warrant of arrest information available to the subject of the record;

(o) "TAC" means an agency's terminal agency coordinator;

(p) "UCCH" means Utah Computerized Criminal History;

(q) "UCJIS" means Utah Criminal Justice Information System, which includes the Criminal Justice Information System; and

(r) "user" means a person working for or with an agency who has direct access to UCJIS or who obtains UCJIS records from a person who has direct access.

R722-900-4. Direct Access to UCJIS for Agencies.

(1) An agency seeking direct access to UCJIS shall submit a completed Criminal Justice Agency Application Packet to the

bureau.

(2)(a) The bureau shall submit the agency's information to the FBI, which shall determine whether the agency meets the requirements for access to CJIS records established by the FBI.

(b) If the FBI determines the agency is entitled to access any CJIS records, the FBI shall assign the agency an ORI and the bureau shall notify the agency in writing what records it may access on UCJIS using the assigned ORI.

(c)(i) If the FBI determines that the agency is not entitled to access records on CJIS, the bureau shall notify the agency of the FBI's decision and refer the agency to the agencies whose records are available on UCJIS to determine if the agency may have access to those records.

(ii) If the FBI grants access to any records on UCJIS, the bureau shall assign the agency an ORI and notify the agency in writing which records the agency may access using that ORI.

(iii) If the agency is not entitled to access any records on UCJIS, the bureau shall notify the agency in writing and provide notice of the right to appeal pursuant to R722-900-10.

(3)(a) Within 30 days after an agency is granted access to records on UCJIS, it shall submit the following documents to the bureau:

(i) a Criminal Justice Agency Agreement, signed by the agency administrator; and

(ii) a CJIS fingerprint submission form with a legible FD258 fingerprint card for the TAC.

(b) The bureau shall conduct a fingerprint-based criminal history background check of the TAC.

(c) If the bureau determines that the TAC meets all the requirements for access to UCJIS, the TAC shall complete the new TAC orientation training provided by the bureau within six months.

(d) If the bureau determines that the TAC does not meet the requirements for access to UCJIS, the bureau shall notify the agency and the TAC in writing including notice of the right to appeal pursuant to R722-900-10.

(4)(a) The agency TAC shall conduct a criminal history check using the name and date of birth of each user or non-user at the agency.

(b) If the criminal history check indicates that the user or non-user does not have any criminal history, the TAC shall create an account on UCJIS and assign the user or non-user a login id.

(c) Within 30 days of assigning a login id to a user or non-user, the TAC shall submit to the bureau:

(i) a UCJIS User Agreement for each user and non-user; and

(ii) a CJIS fingerprint submission form with a legible FD258 fingerprint card for all users and non-users employed at the agency.

(d) The bureau shall conduct a fingerprint-based criminal history background check for all users and non-users employed at the agency.

(e) If the bureau determines that a user or non-user meets the requirements for access to CJIS, the bureau shall notify the TAC that the user or non-user has been approved.

(f) If the bureau determines a user or non-user does not meet the requirements for access to CJIS, the bureau shall notify the user or non-user, the TAC, and the agency administrator in writing which includes the right to appeal pursuant to R722-900-10.

(5)(a) Within six months of assigning a login id to a user or non-user, the TAC shall train the user or non-user in accordance with the BCI Operations Manual.

(b) Upon completion of the training, the TAC shall administer a test to the users and submit to the bureau a signed testing agreement form from each user indicating that the user passed all of the required training and testing.

(6)(a) The TAC shall attend the annual TAC training meeting and provide updates to all users and non-user at the agency based on the training.

(b) The TAC shall be responsible for ensuring that all users or non-users at the agency complete all training required by the bureau.

(c) The TAC shall be responsible for ensuring that all users at the agency complete all re-testing required by the bureau.

(d) The bureau may suspend or revoke a TAC's, user's, non-user's access to records if the TAC, user, or non-user fails to complete the required training or testing.

R722-900-5. Access for Entities.

(1)(a) An entity seeking access to criminal background check information for employment background checks or other screening purposes shall submit a completed Qualified Entity Application Packet to the bureau, which includes the following:

(i) a Qualified Entity Application Form;

(ii) documentation that it is a business, organization, or governmental entity that is qualified to access criminal background check information;

(iii) a description of why the entity is seeking to conduct employment background checks or other screenings;

(iv) billing information; and

(v) contact information for:

(A) the entity's administrator; and

(B) a point of contact.

(2)(a) The bureau shall review the entity's application to determine whether the entity meets the requirements for access to criminal background check information found in state or federal law.

(b) The bureau may request additional documentation from the entity to verify whether the entity is qualified to access criminal history information.

(c) If the bureau determines that an entity is qualified to access criminal background check information, it shall notify the entity in writing and assign it an entity id.

(d) If the bureau determines the entity is not qualified to access criminal background check information, the bureau shall notify the entity of the bureau's decision in writing and provide notice of the right to appeal pursuant to R722-900-10.

(3)(a) Once an entity has been granted access to criminal background check information, it shall submit the following documents to the bureau:

(i) a Qualified Entity Agreement, signed by the entity administrator; and

(ii) a signed Qualified Entity Employee Agreement for each employee of the entity who will have access to criminal background check information.

(b) Any employee of the entity who has access to criminal background check information shall successfully complete all training and testing required by the bureau.

(c) The bureau may suspend or revoke access to criminal background check information if an employee of an entity fails to complete the required training and testing.

R722-900-6. Individual Right of Access.

(1) An individual may review his or her own criminal history record information contained in a UCCH, by submitting a completed Criminal History Record Application to the bureau along with:

(a) a set of fingerprints which have been verified with photo identification at the time the fingerprints were taken;

(b) a copy of a government issued photo identification; and

(c) payment of the processing fee required by Subsection 53-10-108(8)(b).

(2)(a) An individual may challenge the completeness and

accuracy of the information contained in the individual's UCCH by submitting a completed Application to Challenge Criminal History Records to the bureau along with:

(i) the challenge fee; and

(ii) documentation to establish what information is missing or incorrect on the UCCH.

(b) The challenge process shall be an informal adjudicative proceeding under Section 63G-4-203.

(c)(i) If the bureau determines that the individual's criminal history record information is incomplete or inaccurate, the bureau shall amend the UCCH.

(ii) The bureau shall send the individual a letter notifying the individual of the changes made to the individual's UCCH and a copy of the individual's corrected UCCH.

(d)(i) If the bureau determines that the criminal history record information is correct, the bureau shall notify the individual in writing that the UCCH shall not be amended.

(ii) An individual may appeal the bureau's decision not to amend a record to district court in accordance with Section 63G-4-402.

(e) If the bureau determines that the individual seeking to challenge information in the UCCH is not the subject of the record, the bureau shall notify the individual in writing.

R722-900-7. Right of Access Programs.

(1) A provider seeking to establish a right of access program shall submit a completed Right of Access Contract.

(2)(a) The bureau shall review the Right of Access Provider Contract to determine whether the provider may conduct a right of access program.

(b) The bureau may request additional information from the provider to determine whether the provider may conduct a right of access program.

(c) If the bureau determines that a provider is qualified to conduct a right of access program, it shall notify the provider in writing.

(d) If the bureau determines the provider is not qualified to conduct a right of access program, it shall notify the provider of the bureau's decision in writing.

R722-900-8. Audits.

(1)(a) All agencies and entities shall submit to audits conducted by the bureau.

(b) Upon request, an agency and entity shall complete the Pre-audit Request within 30 days from the date it is sent by the bureau.

(c) An agency and entity shall complete the Audit Survey within 30 days from the date it is sent out by the bureau.

(d) The bureau shall review the information submitted by the agency and entity to determine if the agency and entity is in compliance with applicable state and federal statutes, rules, and regulations.

(e) The bureau shall notify the agency and entity of the audit results in writing and give the agency, entity, or provider an opportunity to rectify any issues it found during the audit.

(f) The bureau may suspend or revoke an agency's access to UCJIS or an entity's access to criminal background check information if it fails to comply with the audit or rectify issues found during the audit.

R722-900-9. Misuse.

(1) Anyone who has reason to believe that records have been misused may submit a written complaint to the bureau.

(2)(a) The bureau shall conduct a review of its records to determine if there is any evidence to support the complaint.

(b) If the bureau finds evidence indicating records may have been accessed, used, disclosed, or disseminated, the bureau shall notify the agency TAC or entity point of contact and request that an internal review be conducted.

(3) The agency or entity shall be responsible for conducting an internal review to determine if there has been misuse of a record and submit its findings to the bureau within 30 days.

(4)(a) If the agency or entity determines there was misuse, the agency or entity shall submit a corrective action plan to the bureau.

(b) The bureau shall review the corrective action plan to determine if the action taken by the agency or entity was sufficient to address the misuse.

(5) If the bureau finds that an agency, entity, TAC, user, non-user, or employee of an entity misused records, the bureau may:

(a) suspend or revoke the access of the agency, entity, TAC, user, non-user, or employee of the entity; and

(b) refer the matter to the appropriate law enforcement agency for investigation and prosecution.

(6) The bureau may suspend or revoke access to records by an agency, entity, TAC, user, non-user, or employee of the entity if the agency, entity, TAC, user, non-user, or employee of the entity fails to comply with any terms of the signed agreement.

R722-900-10. Appeal.

(1)(a) An agency or entity denied access to records may appeal the bureau's decision by sending a written request for review to the bureau within 30 days of the date of the denial of access.

(b) An agency may appeal the bureau's decision to deny a TAC, user, or non-user access to records by sending a written request for review to the bureau within 30 days of the date of the denial of access.

(2) A request for review shall include:

(a) a description of the grounds for review; and

(b) supporting documentation.

(3)(a) The bureau director or the director's designee shall review the request for review and issue a written decision within 30 days from the date of the appeal.

(b) If the bureau's decision to deny an agency or entity is upheld, the bureau shall notify the agency or entity of the right to appeal to the district court by complying with the requirements in Section 63G-4-402.

(c) If the bureau's decision to deny a TAC, user, non-user is upheld, there shall be no further right of appeal.

KEY: access to records, UCJIS, criminal justice agencies, qualified entities

August 21, 2013

53-10-102

Notice of Continuation April 10, 2013

53-10-108

R805. Regents (Board of), University of Utah, Administration.**R805-1. Operating Regulations for Bicycles, Skateboards, Rollerskates and Scooters (Non-Motorized Riding Devices).****R805-1-1. Purpose and Scope.**

A. The purpose of this Rule is to govern the operation and use of non-motorized riding devices, including bicycles, skateboards, rollerskates and scooters, on the campus of, or on other premises owned, operated or controlled by, the University of Utah.

The University wishes to encourage and facilitate the use of non-motorized forms of transportation to, from and across the University campus while also ensuring a safe environment for pedestrians, reducing risks of personal injury for pedestrians or device riders, and avoiding damage to University facilities caused by inappropriate use of devices on University premises. This Rule is intended to balance these interests.

B. This Rule governs the use of non-motorized riding devices by members of the public who visit the University of Utah campus. It is not intended to govern use by current University students and faculty, University employees, and other persons who are formally affiliated with the University. The use of such devices on University premises by members of the University community is governed by University of Utah Policy 3-232.

This Rule is not intended to govern the use of any non-motorized riding device carried out as a planned part of a special event specifically approved by University officials to be conducted on University premises, including a riding competition, exhibition, or similar event. Use of riding devices as part of any such event will be governed by the terms of any applicable contract or event rules.

R805-1-2. Definitions.

These definitions apply for the limited purposes of this Rule.

A. "Bicycle" means a device propelled by human power upon which a person may ride having two tandem wheels either of which is more than 12 inches in diameter. It also includes any device generally recognized as a bicycle, although equipped with more than one front or rear wheel (e.g., a tricycle).

B. "Skateboard" means a non-motorized device consisting of two or more wheels affixed to a platform or footboard upon which a rider stands and which does not have steering capability similar to that of a bicycle or brakes which operate on or upon the wheels of the skateboard. It also includes every device generally recognized as a skateboard.

C. "Scooter" means a non-motorized device consisting of two or more wheels affixed to a platform or footboard upon which a rider stands and which has a handle or other mechanism for holding or guiding the device. It also includes every device generally recognized as a scooter. It does not include mopeds, whether operated with or without motor power. For the purpose of this Rule mopeds and motorcycles are considered motor vehicles, and are not within the scope of this Rule.

D. "Rollerskates" means a device consisting of a shoe with a set of wheels attached for skating or a metal frame with wheels attached that can be fitted to the sole of a shoe worn by a person. It includes in-line skates, rollerblades and every device generally recognized as rollerskates.

E. "University premises" means the University campus and any other real property or structure located on real property owned, operated or controlled by the University of Utah.

F. "Non-motorized riding device" means any non-motorized device designed or used for riding by one or more persons including any bicycle, skateboard, scooters, or rollerskates, as defined above. "Non-motorized riding device" does not include a wheelchair or similar device when being

used for transportation by any person with disabilities or a baby stroller or similar device when being used for transporting any child.

G. "Visitor" means a member of the public who visits University premises and is not a student, employee or other person who is formally affiliated with the University.

R805-1-3. Rule.

A. Permissible and Impermissible Uses of Non-Motorized Riding Devices.

1. In areas where designated bicycle paths are provided, bicycles may only be ridden in such designated bicycle paths. Where bicycle paths are not available for reaching a particular location, bicycles may be ridden upon roadways and pedestrian sidewalks to reach such areas. However, the University may identify and by appropriate signage designate some locations in which bicycle riding is prohibited either permanently or during certain time periods (e.g., restricting bicycle riding on certain highly congested pedestrian walkways during designated periods). Bicycle riders shall comply with all official traffic control devices and signs including posted signs prohibiting riding in a particular designated location. Bicyclists may dismount and walk their bicycles across any pedestrian accessible area in which bicycling riding is prohibited.

2. Skateboards, scooters and rollerskates (or other non-motorized riding devices other than bicycles) may only be ridden upon designated bicycle paths and pedestrian pathways. Riding such devices on roadways or in parking lots is strictly prohibited at all times--because the University has determined that such uses would present unacceptable risks of injury to riders and other users, and unacceptable impeding of motor vehicle traffic in such areas. Also, the University may identify and by appropriate signage designate certain areas in which riding of any particular type of non-motorized device is prohibited (e.g., it may designate certain pedestrian pathways as off-limits for skateboard riding because risks of personal injury are heightened due to steep grades or congestion). Persons riding such non-motorized riding devices shall comply with all official traffic control devices and signs including posted signs prohibiting riding in a particular designated location. Device users may dismount and carry their devices across any pedestrian accessible area in which riding of such devices is prohibited.

3. Non-motorized riding devices, of any type, shall not be ridden upon any stairway, wall, bench, fountain, or other structure or facility, or on or over landscaping, shrubbery, grass or flower beds. Such devices shall not be ridden within any building or parking structure.

4. Every person riding a non-motorized riding device in any pedestrian accessible area shall yield the right of way to pedestrians at all times.

5. Every person riding a non-motorized riding device shall ride their device in a controlled manner and shall exercise due care and reasonable caution to prevent injury to others, to self, or to property.

6. No person riding a non-motorized riding device shall exceed a reasonable and proper speed under the circumstances then and there existing (including the limited braking or steering capabilities of the device). In no instance shall any person operate a non-motorized riding device at a speed greater than 10 miles per hour upon any bicycle path, sidewalk or other pedestrian pathway.

7. Non-motorized riding device shall not be ridden two or more abreast on any bicycle path, sidewalk or pedestrian walkway.

8. No non-motorized riding device shall be used to carry more persons at one time than the number for which it is designed and equipped, except that an adult bicycle rider may carry a child securely attached to his/her person in a backpack

or sling or in a child carrier securely attached to the bicycle. No bicycle rider shall carry any package, bundle, or other article which may prevent the rider from keeping at least one hand on the handle bars.

9. No person riding a non-motorized riding device shall attach the same in any manner to any moving motor vehicle, except that this shall not prohibit the attaching to a bicycle of a bicycle trailer or semitrailer specifically designed for such attachment.

10. Every bicycle ridden on University premises shall be equipped with such brakes, reflectors and other safety devices as are required by Utah state law for operating a bicycle on streets or highways.

11. No non-motorized riding devices of any type shall be left unattended or parked on or at ramps, entrances or other facilities designated for persons with physical disabilities or in such a manner as to impede the free and clear use of such facilities.

12. No non-motorized riding devices shall be left unattended or parked in the public areas of any building, including but not limited to hallways, stairwells, and classrooms. Such devices shall not be left unattended or parked at or near any building entrance or exit in such manner as to impede the free and clear use of such areas.

13. No non-motorized devices shall be parked at or attached to any fire hydrant, standpipe, building service equipment or other safety device.

B. Sanctions for Impermissible Uses

1. Any Visitor who violates sections III(A)(1) through III(A)(10), above may be subject to the following sanctions:

a. For a first offense, the University will record the individual's name and provide a written warning against further non-motorized riding device use in violation of this Rule. If, at the time of violation, an individual does not produce satisfactory identification, his/her non-motorized riding device will be impounded. The non-motorized riding device will be released when the individual presents appropriate proof of the individual's identification to the University's Department of Public Safety. There is no impoundment fee (or any fine) for the first offense. (However, note that per section III-E below, any violation which results in serious injury to another person or major damage to property could result in criminal prosecution or civil liability under applicable Utah state law. In such serious cases, a Public Safety officer may take the device into custody as evidence).

b. For a second offense which takes place within twenty-four months of an individual's first offense or warning, the non-motorized riding device will be impounded for not less than forty-eight hours and the individual shall be required to pay a fine of not less than \$100 dollars plus the applicable impoundment fee.

c. For offenses after an individual's second offense, which are within twenty-four months of the individual's immediately preceding offense, the non-motorized riding device will be impounded for not less than thirty calendar days and the offender shall be subject to an escalating schedule of fines for each offense beyond the second offense, plus the applicable impoundment fee.

d. In appropriate cases, including but not limited to chronic or flagrant violations of this Rule, Visitors may be prohibited from riding or using non-motorized devices on University premises, permanently or for a designated period.

e. In appropriate cases, including but not limited to chronic or flagrant violations of this Rule, Visitors may be subject to eviction or denial of access to University premises.

2. Any Visitor who violates sections III(A)(1) through III(A)(14), above may be subject to the following sanctions:

a. Receipt of a violation notice which will be processed and settled through the office of Commuter Services. Violation

notice fees shall be paid within seven working days of receipt of the notice. After the seven day period, additional fees or penalties will be invoked. It is the responsibility of the recipient of a violation notice to promptly settle it.

b. Non-motorized devices parked or placed in prohibited areas will be impounded, or otherwise secured by the Department of Public Safety. Non-motorized devices parked or placed in areas where they may constitute a hazard to others will be removed and impounded.

3. The sanctions set forth under section III(B)(2) will not be applied in an instance in which an individual receives sanctions under section III(B)(1) for the same offense.

4. All Utah state laws pertaining to non-motorized riding devices are in full force and effect on University premises. In particular, improper usage of such devices resulting in injury to other persons or property damage may subject the user to criminal prosecution or civil liability under applicable state law, in addition to any sanctions provided for under this Rule.

C. Impoundment

Impounded non-motorized riding devices will be held by the University's Department of Public Safety or office of Commuter Services and released only during regular business hours to individuals with satisfactory identification. Payment of an impoundment fee (not to exceed \$25) will also be required for release, except as provided in III(B)(1)(a) above.

Devices impounded under this section will be held for a maximum of sixty days following the applicable impoundment period. Devices not retrieved during this period are presumed to have been abandoned and will be subject to disposal by University Surplus and Salvage. The device owner who has abandoned his/her device shall not be entitled to repurchase the device at University Surplus and Salvage.

The University and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impounding, storage, or sale of any item under this section.

Impoundment or sale of any non-motorized riding device under this section shall neither substitute for, nor release any person from, liability for damage to persons or property caused by use of a non-motorized device on University premises (under applicable Utah law per Part III-E); nor does it remove the obligation for any fines or fees associated with the violation or other outstanding citations. Any proceeds resulting from the sale of a non-motorized riding device will be credited toward the outstanding fee associated with the impoundment of that device.

D. Appeals

1. Impoundments and fines or fees assessed pursuant to Section III(B)(1) above may be appealed to the Office of the Vice President for Administrative Services. The decision of the Vice President for Administrative Services, or his designee, shall be final.

2. Violation notices provided pursuant to Section III(B)(2) above may be appealed to the University's office of Commuter Services under the same rules, including time limitations, as parking violation notices. See Policy 5-206 Vehicle Parking Policy. An adverse ruling of an Appeals Officer may be appealed to the Parking Appeals Committee under the same rules, including time limitations, as parking violation notices. The decision of the Parking Appeals Committee shall be final.

KEY: bicycles, pedestrians, safety, speed limits, skateboards
August 21, 2013 **53B-2-106**
Notice of Continuation March 12, 2013 **53B-3-101**
76-8-701 et seq.

R877. Tax Commission, Motor Vehicle Enforcement.**R877-23V. Motor Vehicle Enforcement.****R877-23V-3. Salesperson Licensed For One Dealer Only Pursuant to Utah Code Ann. Section 41-3-202.**

A. The holder of a dealer's license may not hold an additional license to engage in the activities of a salesperson for another dealer.

B. The requirement that a salesperson may be licensed with only one dealer at a time does not preclude dealership owners from being no-fee salespersons for their own dealerships.

R877-23V-5. Temporary Motor Vehicle Registration Permits and Extension Permits Issued by Dealers Pursuant to Utah Code Ann. Section 41-3-302.

(1) Every dealer desiring to issue temporary permits for the operation of motor vehicles shall make application to the Motor Vehicle Enforcement Division. If the privilege is extended, the dealer will receive a series of permits, consecutively numbered. The numbers shall be recorded by the division and charged to the dealer.

(2) If a vehicle purchaser requests a temporary permit, the dealer shall issue no more than one temporary registration permit, in numerical sequence, for each motor vehicle sold.

(3) The expiration date on the original permit shall be legible from a distance of 30 feet.

(4) The permit shall be displayed at the rear of the motor vehicle, in a place where the printed information on the permit and the expiration date may be easily seen.

(5) Temporary permits must not be placed in rear windows or permit holders with less than seventy percent light transparency.

(a) If a permit holder is used, it must not cover any of the printed information on the permit, including the expiration date.

(b) If a license plate frame is used in conjunction with a permit holder, it must not cover any printed information or expiration date on the permit.

(c) Temporary permits must be protected from exposure to the weather and conditions that would render them illegible.

(6) If a temporary permit is filled out incorrectly, the sale of the vehicle is rescinded, or for some other reason the permit is unusable, the dealer must return the permit to the Motor Vehicle Enforcement Division, together with the stub, and it will not be considered issued. If the permit is placed on a vehicle and the sale has not been rescinded, the permit will be considered issued and the dealer is liable for the registration fee for the vehicle together with any applicable penalties.

(7) A dealer's temporary permits may be audited at any time and the dealer required to pay for all outstanding permits. The registration fee charged will be for a passenger car unless the dealer is licensed to sell only motorcycles or small trailers.

(a) If the dealer's records indicate that the permit was issued for a vehicle other than that for which the dealer was billed, the dealer must submit the proper fee and penalty.

(b) If the records disclose that the permit was cleared properly, the dealer must furnish the license number of the vehicle for which the permit was issued and the date of issue.

(c) A dealer shall resolve any outstanding permit billings by payment of fees and penalties or by reconciling the permits before any additional permits will be issued to the dealer. This action will not be construed to be a cancellation of a dealer's privilege of issuing temporary permits, but merely a function of the division's routine audit and billing procedure.

(8) The dealer shall keep a written record in numerical sequence of every temporary registration permit issued. This record shall include all of the following information:

(a) the name and address of the person or firm to whom the permit is issued;

(b) a description of the motor vehicle for which it was

issued, including year, make, model, and identification number;

(c) date of issue;

(d) license number;

(e) in the case of a commercial vehicle, the gross laden weight for which it was issued.

(9) In exceptional circumstances a dealer as agent for the division may issue an additional temporary permit for a vehicle by following the procedures outlined below:

(a) The dealer must contact the division and request an extension permit for a particular vehicle. If the request is denied, no extension permit will be issued.

(b) If the extension permit is approved, the division shall issue the dealer an approval number. This number must be recorded by the dealer in its temporary permit record and on the permit and stub in the space provided for the license number. The space provided on the permit and stub for the dealer name must be completed with the words "State Tax Commission" and the dealer's license number. The remainder of the permit and stub will be completed as usual.

(c) The dealer must return the permit stub to the division within 45 days from the date it is issued.

(d) A dealer may not issue an extension permit if it is determined that the dealer has been granted extensions for more than 2% of the permits issued to the dealership during the past three months. This percentage is calculated by dividing the number of extensions granted the dealer during the past three months by the permits issued by the dealer during the past three months.

(10) All extension permits issued by dealers under this rule are considered issued by the division.

(11) When a motor vehicle is sold for registration in another state, the stub portion of the temporary permit shall be filed with the division within ten days from the date of issue, accompanied by the required fee. The sale must be reported in the dealer's monthly report of sale required by Section 41-3-301(2)(b). If the permit stub and the required fee are not postmarked or received by the division within 45 days, a penalty equal to the required fee shall be collected pursuant to Section 41-3-302.

(12) The temporary registration card, attached to the temporary permit, must be detached and given to the customer at the time the temporary permit is issued. This temporary registration card must be kept in the vehicle while the temporary permit is displayed.

R877-23V-6. Issuance of In-Transit Permits Pursuant to Utah Code Ann. Section 41-3-305.

(1)(a) Transported semitractors are piggy-backed when all of the semitractors being transported are touching the ground.

(b) Each piggy-backed vehicle must have a separate in-transit permit or be properly registered for operation in Utah.

(2) In-transit permits may not be issued for loaded motor vehicles over 12,000 pounds gross laden weight.

(3) A semitractor hauling unlicensed trailers must obtain an in-transit permit for any trailer in contact with the ground.

(4) Subject to Subsections (5) and (6), the following entities may issue in-transit permits:

(a) a licensed dealer that is primarily engaged in the business of auctioning consigned motor vehicles to other dealers or the public; and

(b) a state or local government agency that is engaged in the business of auctioning motor vehicles to dealers or the public.

(5) An entity issuing an in-transit permit under Subsection (4) shall maintain records of all in-transit permits obtained from the division. These records shall include:

(a) vehicle purchaser information;

(b) vehicle identification number; and

(c) evidence that the purchaser has met the requirements

for issuance of the in-transit permit.

(6) An entity described in Subsection (4) that fails to maintain the records required under Subsection (5) may be prohibited from issuing in-transit permits.

R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210.

(1)(a) "Advertisement" means any oral, written, graphic, or pictorial statement made that concerns the offering of a motor vehicle for sale or lease.

(b) "Advertisement" includes any statement or representation:

(i) made in a newspaper, magazine, electronic medium, or other publication;

(ii) made on radio or television;

(iii) appearing in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, letter, or other printed material;

(iv) contained in any window sticker or price tag; and

(v) in any oral statement.

(c) "Advertisement" includes the terms "advertise" and "advertising".

(d) "Advertisement" does not include:

(i) a statement made solely for the purpose of obtaining motor vehicle financing or a motor vehicle title; or

(ii) hand written negotiation sheets between a dealer and a customer of the dealer.

(2) Violation of any of the following standards of practice for the advertising and selling of motor vehicles is a violation of Section 41-3-210.

(a) Accuracy. Any advertised statements and offers about a motor vehicle as to year, make, model, type, condition, equipment, price, trade-in-allowance, terms, and so forth, shall be clearly set forth and based upon facts.

(b) Bait. Bait advertising and selling practices may not be used. A motor vehicle advertised at a specific price shall be in the possession of the advertiser at the address given. It shall be willingly shown, demonstrated and sold. If sold, the advertiser shall, upon request of any prospective purchaser, peace officer, or employee of the division, show sales records of the advertised motor vehicle.

(c)(i)(A) Price. When the price or payment of a motor vehicle is quoted, the motor vehicle shall be clearly identified as to make, year, model and if new or used. Except as provided in Subsection (c)(i)(B), the advertised price must include charges that the customer must pay for the motor vehicle, including freight or destination charges, dealer preparation, and dealer handling.

(B) The following fees are not required to be included in the advertised price that the customer must pay for the motor vehicle:

(I) dealer document fees;

(II) if optional, undercoating or rustproofing fees; and

(III) taxes or fees required by the state or a county, including sales tax, titling and registration fees, safety and emission fees, and waste tire recycling fees.

(ii) In addition to other advertisements, this pertains to price statements such as "\$..... Buys".

(iii) When "list", "sticker", or words of similar import are used in an advertisement, they may refer only to the manufacturer's suggested retail price. If a supplementary price sticker is used, the advertised price must include all items listed on the supplementary sticker.

(iv) If the customer requests and receives a temporary permit, the temporary permit fee need not be included in the advertised price.

(d) Savings and Discount Claims. Because the intrinsic value of a used motor vehicle is difficult to establish, specific claims of savings may not be used in an advertisement. This

includes statements such as, "Was priced at \$....., now priced at \$....."

(i) The word "wholesale" may not be used in retail motor vehicle advertising.

(ii) When a motor vehicle advertisement contains an offer of a discount on a new motor vehicle, the amount of the discount must be stated by reference to the manufacturer's suggested retail price of the motor vehicle.

(e) Down Payments. The amount of the down payment may not be stated in a manner that suggests that it is the selling price of the motor vehicle. If an advertisement states "You can buy with no money down", or terms of similar import, the customer must be able to leave the dealership with the motor vehicle without making any outlay of money.

(f) Trade-in Allowance. Statements representing that no other dealer grants greater allowances for trade-ins may not be used. A specific trade-in amount or range of trade-in amounts may not be used in advertising.

(g)(i)(A) Finance. The phrases, "no finance charge", "no carrying charge", or similar expressions may not be used when there is a charge for placing the transaction on a time payment basis. Statements representing or implying that no prospective credit purchaser will be rejected because of inability to qualify for credit, such as "we accept all credit applications", may not be used.

(B) If the amount of the advertised payment changes during the term of the loan, both the payments and the terms of the loan must be disclosed together.

(ii) The phrase "we will pay off your trade no matter what you owe" may not be used.

(h) Unpaid Balance and Repossessions. The term "repossessed" may be used only to describe motor vehicles that have actually been repossessed from a purchaser. Advertisers offering repossessed motor vehicles for sale may be required to offer proof of those repossessions. The unpaid balance shall be the full selling price unless otherwise stated.

(i) Current Used. When a used motor vehicle, as defined by Section 41-3-102, of a current series is advertised, the first line of the advertisement must contain the word "used", "pre-owned", "certified used", "certified pre-owned", or other similar term used to designate a used motor vehicle, or the text must clearly indicate that the motor vehicle offered is used.

(j) Demonstrators, Executives' and Officials' Motor Vehicles.

(i) "Demonstrator" means a motor vehicle that has never been sold or leased to a member of the public.

(ii) Demonstrator motor vehicles include motor vehicles used by new motor vehicle dealers or their personnel for demonstrating performance ability but not motor vehicles purchased or leased by dealers or their personnel and used as their personal motor vehicles.

(iii) A demonstrator motor vehicle may be advertised for sale only by a dealer franchised for the sale of that make of new motor vehicle.

(iv) An executive's or official's motor vehicle shall have been used exclusively by an executive of the dealer's franchising manufacturer or distributor, or by an executive of the franchised dealership. These motor vehicles may not have been sold or leased to a member of the public prior to the appearance of the advertisement.

(v) Demonstrator's, executive's and official's motor vehicles shall be clearly and prominently advertised as such. Advertisements shall include the year, make, and model of the motor vehicle offered for sale.

(k) Taxi-cabs, Police, Sheriff, and Highway Patrol Motor Vehicles. Taxi-cabs, police, sheriff, and highway patrol motor vehicles shall be so identified. These motor vehicles may not be described by an ambiguous term such as "commercial".

(l) Mileage Statements. When an advertisement quotes

the number of miles or a range of miles a motor vehicle has been driven, the dealer must have written evidence that the motor vehicle has not been operated in excess of the advertised mileage.

(i) The evidence required by this section shall be the properly completed odometer statement required by Section 41-1a-902.

(ii) If a dealer chooses to advertise specific mileage or a range of miles a motor vehicle has been driven, the dealer shall upon request of any prospective purchaser, peace officer, or employee of the division produce all documents in its possession pertaining to that motor vehicle so that the mileage can be readily verified.

(m) Underselling Claims. Unsupported underselling claims may not be used. Underselling claims include the following: "our prices are guaranteed lower than elsewhere", "money refunded if you can duplicate our values", "we guarantee to sell for less", "we sell for less", "we purchase motor vehicles for less so we can sell them for less", "highest trade-in allowance", "we give \$300 more in trade than any other dealers". Evidence of supported underselling claims must be contained in the advertisement and shall be produced upon request of a prospective purchaser, peace officer, or employee of the division.

(n) Free. "Free" may be used in advertising only when the advertiser is offering a gift that is not conditional on the purchase of any property or service.

(o) Driving Trial. A free driving trial means that the purchaser may drive the motor vehicle during the trial period and return it to the dealer within the specified period and obtain a refund of all moneys, signed agreements, or other considerations deposited and a return of any motor vehicle traded in. The exact terms and conditions of the free driving trial shall be set forth in writing and a copy given to the purchaser at the time of the sale.

(p) Guaranteed. When words such as "guarantee", "warranty", or other terms implying protection are used in advertising, an explanation of the time and coverage of the guarantee or warranty shall be given in clear and concise language. The purchaser shall be provided with a written document stating the specific terms and coverage.

(q) Name Your Own Deal. Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own motor vehicle", and phrases of similar import may not be used.

(r) Disclosure of Material Facts. Disclosures of material facts that are contained in advertisements and that involve types of motor vehicles and transactions shall be made in a clear and conspicuous manner.

(i) Fine print, and mouse print are not acceptable methods of disclosing material facts.

(ii) The disclosure must be made in a typeface and point size comparable to the smallest typeface and point size of the text used throughout the body of the advertisement.

(iii) An asterisk may be used to give additional information about a word or term, however, asterisks or other reference symbols may not be used as a means of contradicting or substantially changing the meaning of any advertising statements.

(s) Lease. When an advertisement relates to a lease, the advertisement must make it readily apparent that the transaction advertised is a lease.

(i) The word "lease" must appear in a prominent position in the advertisement in a typeface and point size comparable to the largest text used to directly advertise the motor vehicle.

(ii) Statements that do not use the term "lease" do not constitute adequate disclosure of a lease.

(iii) Lease advertisements may not contain the phrase "no down payment" or words of similar import if an outlay of

money is required to lease the motor vehicle.

(iv) Lease terms that are not available to the general public may not be included in advertisements directed at the general public.

(v) Limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

(t) Electronic Medium Disclosures. A disclosure appearing in any electronic advertising medium must clearly and conspicuously feature all necessary information in a manner that can be read and understood if type is used, or that can be heard and understood if audio is used.

(u) Invoice or Cost. The terms "invoice" or "factory invoice" may be used as long as the dealer is willing to show the factory invoice to the prospective buyer. The term "cost" may not be used.

(v) Rebate Offers. "Rebate", "cash rebate", or similar terms may be used only when it is clearly and conspicuously stated who is offering the rebate.

(w) Buy-down Interest Rates. No buy-down interest rate may be advertised unless the dealer discloses the amount of dealer contribution and states that the contribution by the dealership may increase the negotiated price of the motor vehicle.

(x) Special Status of Dealership. A motor vehicle advertisement may not falsely imply that the dealer has a special sponsorship, approval status, affiliation, or connection with the manufacturer that is greater or more direct than any other like dealer.

(y) Price Equaling. An advertisement that expresses a policy of matching or bettering competitor's prices shall fully disclose any conditions that apply and specify the evidence a consumer must present to take advantage of the offer. The evidence requirement may not place an unreasonable burden on the consumer; however, for example requiring the consumer to bring a written offer made to that consumer by an authorized representative of a dealership on a substantially similar motor vehicle would be considered reasonable.

(z) Auction. "Auction" or "auction special" and other terms of similar import may be used only in connection with motor vehicles offered or sold at a bona fide auction.

(aa) Layout and Type Size. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio, television, or electronic medium advertisements may not convey or permit an erroneous or misleading impression as to which motor vehicle or motor vehicles are offered at featured prices.

(i) When an advertisement contains a picture of a motor vehicle along with a quoted price, the motor vehicle pictured must be a similar model with similar options and accessories as the motor vehicle advertised.

(ii) No advertised offer, expression, or display of price, terms, down payment, trade-in allowances, cash difference, savings, or other material terms may be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

(iii) Qualifying terms and phrases shall be clearly, conspicuously, and accurately set forth as follows:

(A) in bold print and in type of a size that is capable of being read without unreasonable extra effort;

(B) in terms that are understandable to the buying public; and

(C) in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

(bb) An advertisement must disclose a salvage or branded title as prominently as the description of the advertised motor vehicle.

R877-23V-8. Signs and Identification Pursuant to Utah

Code Ann. Section 41-3-105.

(1) Every dealer, dismantler, manufacturer, remanufacturer, transporter, crusher, body shop, and distributor must post a sign at its principal place of business.

(2) The sign required under Subsection (1) shall:

(a) plainly display in a permanent manner the name under which the business is licensed;

(b) be at least 24 square feet in size, unless required otherwise, in writing, by a government entity; and

(c) be painted on the building, attached to the building with nails or bolts, or affixed to posts that have been securely anchored in the ground.

(3) A similar sign must be conspicuously posted at each additional place of business and must show, in addition, the address of the principal place of business. All signs must remain posted at each place of business and on the office. If the office is not located at the site on which the motor vehicles are displayed or offered for sale or exchange, the bonded dealer number, dismantler number, or manufacturer number must also be conspicuously displayed either on the sign or on the building.

(4) If the additional place of business is an auto show or similar business that will conduct business for ten days or less, the sign need only show the licensee's name as licensed by the division and be of a size that reasonably identifies the licensee.

(5) No place of business may be operated under a name other than that by which the licensee is licensed by the division. No sign may be posted at a place of business that shows a business name other than the one licensed by the division or gives the impression that the business is other than the one licensed by the division. However, a sign containing a variation of the licensee's name, if a variation of the licensee's name is required by a manufacturer in writing, may be posted as long as the sign containing the licensed name is more prominent.

(6) Documents submitted by a licensee to a government entity shall be identified only by the name under which the licensee is licensed by the division. All documents used by the licensee to promote or transact a sale or lease of a vehicle shall identify that licensee only by the name under which the licensee is licensed with the division.

R877-23V-10. Uniform Vehicle Identification Numbering System for Licensed Manufacturers Pursuant to Utah Code Ann. Section 41-3-202.

A. Except as provided in subsection (B), all manufacturers of motor vehicles licensed under Section 41-3-202 shall comply with the National Highway Traffic and Safety Administration's Standard No. 115, 49 C.F.R. Section 571.115 (1992), regarding 17-character vehicle identification number (VIN) requirements.

B. Manufacturers involved only in the second stage of a multi-stage vehicle are not required to comply with subsection (A) if the manufacturer of the first stage has complied with subsection (A).

R877-23V-11. License Information Update Pursuant to Utah Code Ann. Section 41-3-201.

A. Every person licensed under Section 41-3-202 shall notify the Motor Vehicle Enforcement Division (division) immediately of any change in ownership, address, or circumstance relating to its fitness to be licensed.

B. The division may request the licensee to review information contained in the division's files and notify the division of any corrections that must be made.

R877-23V-12. Documents Required Prior to Issue of a License Pursuant to Utah Code Ann. Section 41-3-105.

The following items must be properly completed and presented to the division before a license is issued.

(1) New motor vehicle dealer or new motorcycle and

small trailer dealer license:

(a) application for license;

(b) dealer bond in the amount prescribed by Section 41-3-205;

(c) evidence that a Utah sales tax license has been issued to the dealership;

(d) franchise verification from the manufacturer of each make of new motor vehicle to be offered for sale;

(e) pictures of the dealership, clearly showing the office, display space, and required sign;

(f) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

(g) the fee required by Section 41-3-601;

(h) evidence that the place of business has been inspected by an authorized division employee or agent;

(i) fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

(2) Used motor vehicle dealer or used motorcycle and small trailer dealer license:

(a) application for license;

(b) dealer bond in the amount prescribed by Section 41-3-205;

(c) evidence that a Utah sales tax license has been issued to the dealership;

(d) pictures of the dealership, clearly showing the office, display space, and required sign;

(e) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

(f) the fee required by law;

(g) evidence that the place of business has been inspected by an authorized division employee or agent;

(h) fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

(3) Manufacturer or remanufacturer license:

(a) application for license;

(b) evidence that the applicant has complied with the National Highway Traffic and Safety Administration's Motor Vehicle Safety Standard No. 115, regarding 17 character vehicle identification number (VIN) requirements;

(c) pictures of the principal place of business and required sign;

(d) the fee required by Section 41-3-601;

(e) evidence that a Utah sales tax license has been issued to the manufacturer or remanufacturer;

(f) evidence that the place of business has been inspected by an authorized division employee or agent.

(4) Transporter license:

(a) application for license;

(b) pictures of the principal place of business and required sign;

(c) the fee required by Section 41-3-601;

(d) if applicable, evidence that a Utah sales tax license has been issued to the transporter;

(e) evidence that the place of business has been inspected by an authorized division employee or agent.

(5) Dismantler license:

(a) application for license;

(b) evidence that a Utah sales tax license has been issued for the dismantler;

(c) pictures of the principal place of business, clearly showing the office and required sign;

(d) the fee required by Section 41-3-601;

(e) evidence that the place of business has been inspected by an authorized division employee or agent.

(6) Crusher license:

- (a) application for license;
- (b) crusher bond as prescribed in Section 41-3-205;
- (c) pictures of the principal place of business, clearly showing the office and required sign;
- (d) the fee required by Section 41-3-601;
- (e) evidence that a Utah sales tax license has been issued for the crusher;
- (f) evidence that the place of business has been inspected by an authorized division employee or agent.
- (7) Salesperson license:
 - (a) application for license;
 - (b) picture of the applicant;
 - (c) fingerprints of the applicant and the fees and waiver required by the Department of Public Safety for the processing of fingerprints;
 - (d) the fee required by Section 41-3-601.
- (8) Distributor, factory branch, distributor branch, or representative license:
 - (a) application for license;
 - (b) the fee required by Section 41-3-601;
 - (c) pictures of the principal place of business, clearly identifying the office and required sign;
 - (d) evidence that a Utah sales tax license has been issued for the distributor;
 - (e) evidence that the place of business has been inspected by an authorized division employee or agent.
- (9) Body shop license:
 - (a) application for license;
 - (b) body shop bond as prescribed in Section 41-3-205;
 - (c) pictures of the principal place of business, clearly showing the office and required sign;
 - (d) the fee required by Section 41-3-601;
 - (e) evidence that a Utah sales tax license has been issued for the body shop;
 - (f) evidence that the place of business has been inspected by an authorized division employee or agent.
- (10) New applicants may also be required to attend an orientation class on motor vehicle laws and motor vehicle business laws before their license is issued.

R877-23V-14. Dealer Identification of Fees Associated with Issuance of Temporary Permits Pursuant to Utah Code Ann. Sections 41-3-301 and 41-3-302.

- (1) Only fees required by Title 41, Chapter 1a, may be identified as state-mandated fees.
- (2) A dealer that charges the purchaser or lessee of a motor vehicle a fee for preparing or processing any state-mandated documents or services ("dealer documentary service fees") must, in addition to the requirements set forth in Subsection (1), prominently display a sign on the dealer premises in a location that is readily discernable by all purchasers and lessees. The sign shall contain the language set forth in Subsection (2)(a).
 - (a) The (dealer documentary service fee) () as set forth in your contract represents costs and profit to the dealer for preparing and processing documents and other services related to the sale or lease of your vehicle. These fees are not set or state mandated by state statute or rule.
 - (b) The blank in Subsection (2)(a) may be wording selected by the dealer to describe the fee charged for document preparation and processing and other services, but must be, in all cases, the actual wording used in the dealer's contract of sale or lease agreement.

R877-23V-16. Replacement or Renewal of Lost or Stolen Special Plates Pursuant to Utah Code Ann. Section 41-3-507.

- A. A lost or stolen dealer, dismantler, manufacturer, remanufacturer, or transporter plate may be replaced only after it has expired.

- B. The replaced special plate shall be included in the calculation of special plates a dealer may be issued under Section 41-3-503.

R877-23V-18. Qualifications for a Salvage Vehicle Buyer License Pursuant to Utah Code Ann. Section 41-3-202.

- A. An applicant for a salvage vehicle buyer license shall provide to the division:
 - 1. evidence that the applicant is licensed in any state as a motor vehicle dealer, dismantler, or body shop;
 - 2. a list of any previous motor vehicle related businesses in which the applicant was involved;
 - 3. evidence that the applicant has business experience in buying, selling, or otherwise working with salvage vehicles;
 - 4. evidence that the applicant understands and complies with statutes and rules relating to the handling and disposal of environmental hazardous materials associated with salvage vehicles under Title 19, Chapter 6, Hazardous Substances; and
 - 5. evidence that the applicant has complied with the provisions of Title 41, Chapter 3, Motor Vehicle Business Regulation Act, or similar laws of another state.

R877-23V-20. Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209.

- There is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license issued under Title 41, Chapter 3 does not include a violation of a state or federal law listed under Subsection 41-3-209(2) if the license applicant:
 - (1) indicates on the license application that the applicant has been charged with, found in violation of, or convicted of a state or federal law listed under Subsection 41-3-209(2);
 - (2) has completed any court-ordered probation or parole;
 - (3) if the license applicant has entered into a plea in abeyance, met the conditions of that plea in abeyance; and
 - (4) paid any required restitution and fines.

R877-23V-22. Reasonable Cause to Waive, Reduce, or Compromise a Penalty Pursuant to Utah Code Ann. Section 41-3-704.

- (1)(a) Reasonable cause to reduce or compromise a penalty imposed by the division under Title 41, Chapter 3 may include a penalty imposed under Section 41-3-702 for a second or subsequent offense that is issued for a violation that occurred before the division notifies the party of the penalty for the initial offense.
 - (b) A person seeking to reduce or compromise a penalty under Subsection (1)(a) shall:
 - (i) demonstrate that there is reasonable cause to reduce or compromise the penalty; and
 - (ii) recommend the amount by which the penalty should be reduced or compromised.
 - (2) A penalty that is reduced or compromised under Subsection (1) may not be reduced or compromised below the penalty imposed for a first offense for that violation.
 - (3) Reasonable cause to waive, reduce, or compromise a penalty imposed by the division under Title 41, Chapter 3 does not include:
 - (a) ignorance of the law; or
 - (b) inability to pay a penalty imposed.
 - (4) Nothing in this rule prevents a person from appealing the appropriateness of a penalty imposed by the division under Title 41, Chapter 3.

KEY: taxation, motor vehicles

August 22, 2013

Notice of Continuation January 3, 2012

41-1a-712

41-3-105

41-3-201

41-3-202

41-3-210
41-3-301
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