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

3-101 Content of the Invitation For Bids.

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

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

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

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

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

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

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

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

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

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

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

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

3-103 Bidder Submissions.

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

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

(3) Bid Samples and Descriptive Literature.

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

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

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

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

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

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

3-104 Public Notice.

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

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

(a) in a newspaper of general circulation;

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

(c) in industry media; or

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

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

3-105 Bidder List; Prequalification.

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

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

3-106 Pre-Bid Conferences.

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

Bids and shall be available as a public record.

3-107 Amendments to Invitation for Bids.

(1) Application. Amendments should be used to:

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

(b) correct defects or ambiguities; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3-111 Mistakes in Bids.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3-112 Bid Evaluation and Award.

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

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

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

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

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

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

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

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

(b) treat all bids equitably.

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

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

(a) new bids or offers may be solicited;

(b) the proposed procurement may be canceled; or

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

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

3-113 Tie Bids.

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

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

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

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

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

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

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

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

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

(a) the Invitation for Bids;

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

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

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

3-114 Multi-Step Sealed Bidding.

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

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

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

(b) to conduct discussions for the purposes of facilitating

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

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

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

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

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

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

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

(a) that unpriced technical offers are requested;

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

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

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

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

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

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

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

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

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

(a) acceptable;

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

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

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

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

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

3-117 Mistakes During Multi-Step Sealed Bidding.

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

(a) before unpriced technical offers are considered;

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

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

3-118 Carrying Out Phase Two.

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

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

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

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

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

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

3-119 Procuring Governmental Produced Supplies or Services.

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

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

3-120 Purchase of Items Separately from Construction Contract.

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

3-121 Exceptions to Competitive Sealed Bid Process.

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

(a) Used vehicles

(b) Livestock

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

(a) Hotel conference facilities and services

(b) Speaker honorariums

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

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

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

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

3-130 Reverse Auctions.

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

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

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

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

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

3-131 Pre-Bid Conferences in Reverse Auctions.

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

3-132 Procedure for Phase One of Reverse Auctions.

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

(a) that unpriced technical offers are requested;

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

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

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

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

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

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

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

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

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

(a) acceptable;

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

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

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

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

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

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

3-133 Carrying Out Phase Two of Reverse Auctions.

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

(2) The invitation for bids shall:

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

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

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

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

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

3-134 Mistakes During Reverse Auctions.

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

(a) before unpriced technical offers are considered;

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

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

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

R33-3-2. Competitive Sealed Proposals.

3-201 Use of Competitive Sealed Proposals.

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

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

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

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

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

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

(2) Determinations.

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

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

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

3-202 Content of the Request for Proposals.

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

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

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

3-203 Proposal Preparation Time.

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

3-204 Form of Proposal.

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

3-204.1 Protected Records.

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

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

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

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

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

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

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

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

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

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

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

3-205 Public Notice.

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

3-206 Pre-Proposal Conferences.

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

3-207 Amendments to Request for Proposals.

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

3-208 Modification or Withdrawal of Proposals.

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

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

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

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

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

3-210 Receipt and Registration of Proposals.

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

3-211 Evaluation of Proposals.

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

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

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

(a) acceptable;

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

(c) unacceptable.

3-212 Proposal Discussion with Individual Offerors.

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

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

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

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

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

3-213 Mistakes in Proposals.

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

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

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

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

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

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

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

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

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

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

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

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

3-214 Award.

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

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

3-215 Publicizing Awards.

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

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

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

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

(c) the rankings of the proposals;

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

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

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

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

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

(b) non-public financial statements; and

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

3-216 Exceptions to Competitive Sealed Proposal Process.

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

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

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

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

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

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

The Chief Procurement Officer, head of a purchasing

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

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

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

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

R33-3-3. Small Purchases.

3-301 General Provisions.

(1) All small purchases must comply with this rule unless another method of source selection provided in Title 63G-6a, the Utah Procurement Code and Administrative Rule R33 is used.

(a) Sole source procurements must follow the process outlined in the Utah Procurement Code and Administrative Rule R33-3-4.

(2) Use of State Cooperative Contracts. An executive branch procurement unit may not obtain a procurement item through this Small Purchasing Rule if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Utah Code 63G-6a-2105(1) unless either (a) or (b) below is met:

(a) The procurement item is obtained for an urgent or unanticipated, emergency condition, including:

(i) an item needed to avoid stopping a public construction project;

(ii) an immediate repair to a facility or equipment; or

(iii) another emergency condition.

(b) The chief procurement officer or the head of a procurement unit that is an executive branch procurement unit with independent procurement authority determines in writing:

(i) that it is in the best interest of the state to obtain a procurement item outside of the state contract after reviewing a cost/benefit analysis comparing, as applicable, the following:

(A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;

(B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;

(C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;

(D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract;

(E) the cost of the procurement item under the state contract with the cost of the procurement item if the procurement item is obtained outside of the state contract; and

(i) that for a procurement item which if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage; the terms and conditions including insurance, indemnifications and warranties, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract.

(3) Prohibition Against Artificial Division of Procurements and Invoices. The Utah Procurement Code provides the following prohibitions: It is unlawful for a person to intentionally or knowingly divide a procurement into one or more smaller procurements with the intent to make a procurement:

(a) qualify as a small purchase if, before dividing the procurement, it would not have qualified as a small purchase; or

(b) meet a threshold established by rule made by the applicable rulemaking authority if, before dividing the procurement, it would not have met the threshold.

(4) A division of a procurement that is prohibited includes doing any of the following with the intent or knowledge described in (3)(a) or (3)(b):

(a) making two or more separate purchases;

(b) dividing an invoice or purchase order into two or more invoices or purchase orders; or

(c) making smaller purchases over a period of time.

(5) A procurement unit subject to these rules may implement more, but not less, restrictive thresholds or require threshold limits to be consolidated at the highest administrative level within the organization.

3-302 Small Purchase Thresholds for Individual Procurement Item(s) under $1,000.

(1) Thresholds for Individual Procurement Item(s) under $1,000:

(a) "Individual Procurement Threshold" means the maximum amount for which a procurement unit subject to these rules may purchase an individual procurement item under this Rule R33-3-302.

(b) "Single Procurement Aggregate Threshold" means the maximum total amount that a procurement unit subject to these rules may expend to obtain multiple individual procurement items from one source at one time under this Rule R33-3-302.

(c) "Annual Cumulative Threshold" means the maximum total amount that a procurement unit subject to these rules may expend to obtain individual procurement items from the same source under this Rule R33-3-302.

(i) For the purpose of this rule, "annual" is defined as the applicable fiscal year of each entity subject to these rules.

(d) The individual procurement threshold $1,000 for a procurement item;

(e) The single procurement aggregate threshold is $5,000 for multiple procurement item(s)purchased from one source at one time; and

(f) The annual cumulative threshold from the same source is $50,000.

(2) For individual procurement item(s) costing up to $1,000, an entity subject to these rules may select the best source by direct award and without seeking competitive bids or quotes.

(3) Competition. Whenever practicable, the Division of Purchasing and General Services and entities subject to these rules shall use a rotation system or other system designed to allow for competition when using the small purchases process.

(4) A procurement unit may not use the small purchase process described in this rule for ongoing, continuous, and regularly scheduled individual procurement items that exceed the annual cumulative threshold and shall make its ongoing, continuous, and regularly scheduled procurements for individual procurement items that exceed the annual cumulative threshold through a contract awarded in accordance with the Utah Procurement Code.

(5) Small purchase expenditures may not exceed the thresholds established under this rule unless the chief procurement officer or the head of a procurement unit with

independent procurement authority provides written justification for exceeding a threshold.

3-303 Professional Services, Including Architectural and Engineering Services Threshold.

(1) "Professional Services, Including Architectural and Engineering" means the total cost to be paid to a professional services provider in conjunction with a small project or purchase under this Rule R33-3-3.

(a) The small purchase threshold for professional services, including architectural and engineering services, is $100,000;

(b) Procurement units subject to these rules shall follow the process outlined in Utah Procurement Code 63G-6a-403 (Prequalification of Potential Vendors) and 63G-6a-404 (Approved Vendor List) or other applicable selection methods outlined in the Utah Procurement Code for the procurement of professional services that include minimum specifications. Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing and General Services in the procurement of professional services;

(c) A contract may not be awarded through a sole source, except as provided in the Utah Procurement Code or Administrative Rule R33-3-4.

3-304 Small Construction Project Threshold.

(1) "Small Construction Project" means the total amount of the construction project including programming, design, and all associated construction costs for a purchase under this Rule33-3-3.

(a) The small construction project threshold is $2,500,000;

(b) Procurement units subject to these rules shall follow the process outlined in the Utah Procurement Code 63G-6a-403 (Prequalification of Potential Vendors) and 63G-6a-404 (Approved Vendor List) or other applicable selection methods outlined in the Utah Procurement Code for construction services.

(c) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing and General Services in the procurement of all construction services.

(d) The Division of Purchasing and General Services may procure small construction projects costing less than $25,001 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that they are capable of meeting the minimum specifications of the project.

(e) Procurement units, with independent procurement authority and subject to these rules, may procure small construction projects costing less than $25,001 by direct award without seeking competitive bids or quotes after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that they are capable of meeting the minimum specifications of the project.

(f) The Division of Purchasing and General Services may procure small construction projects costing between $25,001 and $100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specification after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(g) Procurement units, with independent procurement authority and subject to these rules, may procure small construction projects costing between $25,001 and $100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specification after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(h) Procurement units with independent procurement authority and subject to these rules, shall procure small construction projects over $100,000 using an invitation to bid or other approve source selection method outlined in the Utah Procurement Code that include minimum specifications and shall award to the contractor meeting the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(i) A contract may not be awarded through a sole source, except as provided in the Utah Procurement Code or Administrative Rule R33-3-4.

3-305 Small Purchases from $1,001 to $50,000 Requiring Quotes.

(1) Procedures.

(a) For procurement item(s) costing between $1,001 and $5,000, an entity subject to these rules shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(b) For procurement item(s) costing between $5,001 and $50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specification.

(c) For procurement item(s) costing over $50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(2) Limited Purchasing Delegation for Small Purchases. The Division of Purchasing and General Services may delegate limited purchasing authority for small purchases costing between $5,001 and $50,000, provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.

(3) Records. The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

3-306 Small Purchases of Services of Professionals, Providers, and Consultants.

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

R33-3-4. Sole Source Procurement.

3-401 Conditions For Use of Sole Source Procurement.

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

Examples of circumstances which could necessitate sole source procurement are:

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

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

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

(4) procurement of items for resale;

(5) procurement of public utility services.

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

3-401.5 Notice of Proposed Sole Source Procurement.

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

3-402 Negotiation in Sole Source Procurement.

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

3-403 Unsolicited Offers.

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

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

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

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

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

R33-3-5. Emergency Procurements.

3-501 Definition of Emergency Conditions.

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

3-502 Scope of Emergency Procurements.

Emergency procurement shall be limited to only those supplies, services, or construction items necessary to meet the emergency.

3-503 Authority to Make Emergency Procurements.

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

3-504 Source Selection Methods.

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

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

3-505 Determination of Emergency Procurement.

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

R33-3-6. Responsibility.

3-601 Standards of Responsibility.

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

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

(b) a satisfactory record of integrity;

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

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

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

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

3-602 Ability to Meet Standards.

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

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

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

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

3-603 Written Determination of Nonresponsibility Required.

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

R33-3-7. Types of Contracts.

3-701 Policy Regarding Selection of Contract Types.

(1) General. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the

purchasing agency or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor for the costs of performance and the amount and kind of profit incentive offered the contractor to achieve or exceed specified standards or goals.

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

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

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

(c) the administrative costs to both parties;

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

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

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

(g) the urgency of the requirement;

(h) the length of contract performance; and

(i) federal requirements.

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

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

(3) Prepayments.

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

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

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

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

(c) All prepaid expenditures must be supported by documentation, which states the goods or services to be furnished, the date of delivery, the payment terms, and remedies for non-compliance.

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

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

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

3-702 Fixed-Price Contracts.

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

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

(3) Fixed-Price Contract with Price Adjustment.

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

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

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

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

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

3-703 Cost-Reimbursement Contracts.

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

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

(2) Determination Prior to Use. A cost-reimbursement

contract may be used only when the procurement officer determines in writing that:

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

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

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

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

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

3-704 Cost Incentive Contracts.

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

(2) Fixed-Price Cost Incentive Contract.

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

(b) Objective. The fixed-price cost incentive contract serves three objectives. It permits the establishment of a firm ceiling price for performance of the contract which takes into account uncertainties and contingencies in the cost of performance. It motivates the contractor to perform the contract economically since cost is in inverse relation to profit; the lower the cost, the higher the profit. It provides a flexible pricing mechanism for establishing a cost sharing responsibility between the purchasing agency and contractor depending on the nature of the supplies, services, or construction being procured, the length of the contract performance, and the performance risks involved.

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

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

3-705 Performance Incentive Contracts.

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

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

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

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

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

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

3-707 Definite Quantity and Indefinite Quantity Contracts.

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

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

(3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that obligates the purchasing agency to order all the actual, normal requirements of designated using agencies during a specified period of time; and for the protection of the purchasing agency and the contractor. Invitations for Bids and resulting requirements contracts shall include a provision. However, the

purchasing agency may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract. Requirements contracts shall contain an exemption from ordering under the contract when the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the purchasing agency.

3-708 Progressive and Multiple Awards.

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

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

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

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

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

3-709 Leases.

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

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

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

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

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

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

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

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

3-710 Multi-Year Contracts; Installment Payments.

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

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

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

3-711 Contract Option.

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

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

3-712 Technology Modification

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

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

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

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

3-801 Scope.

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

3-802 Requirements for Cost or Pricing Data.

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

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

(b) the pricing of any adjustment to any contract, including a contract, awarded by competitive sealed bidding, whether or not cost pricing data was required in connection with the initial pricing of the contract, as requested by the procurement officer. However, this requirement shall not apply when unrelated and

separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.

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

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

(a) where the contract price is based on:

(i) adequate price competition;

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

(iii) prices set by law or rule; or

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

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

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

Cost or pricing data shall be submitted to the procurement officer at the time and in the manner prescribed in these rules or as otherwise from time to time prescribed by the procurement officer. When the procurement officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, the data shall either be actually submitted or specifically identified in writing. When cost or pricing data is required, the data is to be submitted prior to beginning price negotiation and the offeror or contractor is required to keep the submission current throughout the negotiations. The offeror or contractor shall certify, as soon as practicable after agreement is reached on price, that the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date prior to reaching agreement. Certification shall be made using the certificate set forth in section 3-804 of this subpart. A refusal by the offeror to supply the required data shall be referred to the procurement officer whose duty shall be to determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the procurement officer who shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment.

3-804 Certificate of Current Cost or Pricing Data.

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

"CERTIFICATE OF CURRENT COST OR PRICING DATA

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

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

Firm

Name

Title

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

(End of Certificate)

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

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

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

3-805 Defective Cost or Pricing Data.

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

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

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

3-806 Price Analysis Techniques.

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

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

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

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

(4) prices available on the open market.

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

3-807 Cost Analysis Techniques.

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

(a) specific elements of costs;

(b) the necessity for certain costs;

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

(d) the reasonableness of allowances for contingencies;

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

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

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

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

3-808 Audit.

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

(a) the cost or pricing data submitted;

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

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

(a) for cost and pricing data audits:

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

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

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

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

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

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

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

(c) the use of federal assistance funds; or

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

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

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

3-809 Retention of Books and Records.

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

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

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

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

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

3-901 Inspection of Plant or Site.

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

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

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

3-902 Access to Plant or Place of Business.

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

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

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

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

3-903 Inspection of Supplies and Services.

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

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

3-904 Conduct of Inspections.

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

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

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

3-905 Inspection of Construction Projects.

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

KEY: government purchasing
October 24, 2013 63G-6
Notice of Continuation July 2, 2012

R33. Administrative Services, Purchasing and General Services.

R33-11. Surplus Property.

R33-11-1. State Surplus Property - General.

11-101. Purpose.

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property and the state surplus property contractor.

11-102. Authority.

Under the provisions of Title 63A, Chapter 2, Section 103, the division shall:

(1) except when a state surplus property contractor administers the state's program for disposition of state surplus property operate, manage, and maintain the state surplus property program;

(2) when a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program.

(3) Manage the federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

(4) Manage the disposition of state owned vehicles.

(5) Control the sale or transfer of firearms from state agencies and participating local agencies, as authorized in Utah Code Title 63A, Chapter 2, Section 4.

(6) Handheld devices/technology (not transferred from state agencies to public schools).

11-103. Definitions.

(A) Terms used in the Surplus Property Rules are defined in Section 63A-2-101.5.

(B) In addition:

(1) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(2) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (11), or (22), designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(5) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(6) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

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

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

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

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

(11) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(12) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(13) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(14) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(15) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

(16) "Personal Watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

(17)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(18) "Reconstructed vehicle" means every vehicle type of a type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(19)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

(iv) a fifth wheel trailer; and

(v) a van.

(20) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

(21) "Sailboat" means any vessel having one or more sails and propelled by wind.

(22) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(23)(a) "Special mobile equipment" means every vehicle:

(i) not designed or used primarily for the transportation of persons or property;

(ii) not designed to operate in traffic; and

(iii) only incidentally operated or moved over the highways.

(b) "special mobile equipment" includes:

(i) farm tractors;
(ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers; and
(iii) ditch-digging apparatus;
(iv) forklifts, warehouse equipment, golf carts, electric carts, etc.
(24) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.
(25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.
(26) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.
(27) "USASP" means Utah State Agency for Surplus Property.
(28) "Vehicle" means the items identified and defined in R33-11-103,except items (5), (7),(8), (9) (15), and (27), and includes all auxiliary equipment and components associated or attached to the vehicle and equipment used by the vehicle for its intended purpose. Examples of auxiliary equipment and components include snow plow blades, spreaders, sanders, vehicle fire extinguishers, emergency equipment, radios, truck bed racks and truck bed covers, generators, mounted welders, non-OEM, lights and light bars, etc.
(29) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

R33-11-2. Non-vehicle Disposition Procedures.
11-201. General Provision.
(1) State-owned non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this rule are followed. State-owned non-vehicle personal property shall not be processed by the division.
(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.
(3) When a department or agency of state government determines that state-owned non-vehicle personal property is in excess to current needs, they will:
(a) transfer the non-vehicle surplus property directly to another department or agency of the state without involvement of the division; or
(b) notify the state surplus property contractor that the department or agency has surplus property.
11-202. Information Technology Equipment.
(1) State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries by the owning agency.
(2) Pursuant to the provisions of section 63A-2-407, state-owned information technology equipment may be transferred directly to non-profit entities for distribution to, and use by, persons with a disability as defined in subsections 62A-5-101(9). However, interagency transfers and sales of surplus property to state and local agencies shall have priority over transfers under this subsection.
(3) Prior to submitting information technology equipment to the state surplus property contractor, another department or agency, or donating it directly to the public institutions or non-profit entities, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.
(4) Except as it relates to a vehicle or federal surplus property, the transfer of surplus property from one agency directly to another does not require approval by the division, the director of the division, or any other person.
11-203. Federal Surplus Property.
(1) Federal Surplus Property is not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.
(2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.
11-205. Related Party Transactions.
(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Section 63A-2. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.
(2) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:
(a) Has purchasing authority.
(b) Has maintenance authority.
(c) Has disposition or signature authority.
(d) Has authority regarding the disposal price.
(e) Has access to restricted information.
(f) Is perceived to be a related party using other criteria which may prohibit independence.
11-206. Priorities.
(1) Public agencies are given priority for the purchase of state-owned surplus property.
(2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public through the state surplus property contractor.
(3) For this rule, the entities listed below, in priority order, are considered to be public agencies:
(a) State Agencies
(b) State Universities, Colleges, and Community Colleges
(c) Other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies
(d) Other tax supported educational entities
(e) Non-profit health and educational institutions
(4) State-owned personal property that is not purchased by or transferred to public agencies may be offered for public sale.
(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:
(a) The cost to the state;
(b) The potential liability to the state;
(c) The overall best interest of the state.

R33-11-3. Accounting and Reimbursement Procedures.
11-301. Accounting.
(1) The Division will record and maintain records of all transactions related to the acquisition and sale of all federal surplus property.
(2) The division will require regular and detailed accounting by the state surplus property contractor of:
(a) the receipt and sale of state surplus property; and
(b) the receipt and payment of any and all funds; and
(c) ensure public transparency regarding the sale of state surplus property.
(3) The division may maintain a federal working capital

reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

11-302. Reimbursement.

(1) After paying the amount owed to the state surplus property contractor, the division shall transfer the remaining money to the agency that requested the sale of the particular item in accordance with Title 63J, Budgetary Procedures Act.

(2) Vehicles.

(a) Reimbursements to state agencies from the sale of their vehicles will be made through the Division of Finance on interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

(3) Payment for vehicles, information technology equipment, federal surplus property, personal handheld devices, and firearms shall be as follows:

(a) Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and personal checks. Personal checks may not be accepted for amounts exceeding $200. Two-party checks shall not be accepted, or

(b) Payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card, or

(c) Payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased.

(d) The division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

(i) The cost to the state;

(ii) The potential liability to the state;

(iii) The overall best interest of the state.

(4) Bad Debt Collection.

(a) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds".

(b) In the event that a check is returned to the division is returned for "insufficient fund," the division may:

(i) Prohibit the debtor from making any future purchases from the division until the debt is paid in full.

(ii) Have division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(c) Debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

(5) Division Rate Schedule.

R33-11-4. Public Sale of State-owned Vehicles.

11-401. Procedures.

(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(5) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.

(6) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) The state agency intends on using the ancillary or component parts or equipment on other agency vehicles; or

(b) The state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) The state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

R33-11-5. Surplus Firearms.

11-501. Purpose and Authority.

This subsection sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in 63A-2-4. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.

11-502. Procedures.

(1) All state owned firearms shall be disposed of under the general provisions of Subsection R33-11-1 11-101.

(a) The sale of firearms directly to the general public by the division is prohibited.

(b) Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.

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

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

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

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

(A) the individual's name;

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

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

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

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

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

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

R33-11-6. Utah State Agency for Surplus Property Adjudicative Proceedings.

11-601. Purpose.

As required by the Utah Administrative Procedures Act, this rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Section 63G-4, et seq.

11-602. Proceedings to be Informal.

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

11-603. Procedures Governing Informal Adjudicatory Proceedings.

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

(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

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

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

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

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

(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

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

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

R33-11-7. State Surplus Property Contractor.

11-701. General Requirements.

(1) The state surplus contractor must be selected through a Request for Proposals that results in a term contract.

(2) The contractor may sell state surplus property by auction, bid or other manner designed to get the best price available for the state surplus property.

(3) The contractor may not engage in the sale of state surplus property in a manner that would constitute a conflict of interest.

(4) The contractor must submit regular and detailed accounting to the division of:

(a) the receipt and sale of state surplus property; and,

(b) the receipt and payment of funds by the contractor.

(5) The contractor must ensure public transparency regarding the sale of state surplus property and is required to:

(a) post online information related to a sale or attempted sale of state surplus property that includes:

(i) a detailed description of the item or items;

(ii) the name of the state agency that requested the sale;

(iii) the price at which the state surplus property was sold; and,

(iv) post the information within a period of time established by the division.

(6) The division may, through the contract with the state surplus contractor, require the state surplus contractor:

(a) to store the state surplus property; or,

(b) charge for the storage of state surplus property.

R33-11-8. Donation, Disposal, or Destruction of State Surplus Property.

11-801. A state agency or department may donate to a charitable organization, destroy, or dispose of as waste any state surplus property that is worth less than $30.00 without involvement of the division or state surplus property contractor if:

(a) the state surplus property fails to sell at auction; or

(b) the cost of selling the state surplus property is greater or equal to the value of the state surplus property; or

(c) the state surplus property is no longer usable; or

(d) the state surplus property is damaged and either cannot be repaired or the cost of repair is greater than or equal to the value of the state surplus property in a repaired state; or

(e) the state surplus property can be replaced for less than the cost of repairing the state surplus property.

KEY: state surplus property
October 24, 2013 **63A-2-401**
63A-2-405
63A-2-407
63G-4

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-1. Scope and Effective Date.

These rules are adopted pursuant to Section 32B-2-202(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32B.

(2) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(3) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(4) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(5) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(6) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(7) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

(8) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn, hotel or resort.

(9) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(10) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(11) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(12) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, beer-only restaurant, airport lounge, on-premise banquet premises, reception center, club, recreational amenity on-premise beer retailer, tavern, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(13) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(14) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(15) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(16) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(17) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(18) "WARNING SIGN" means a sign no smaller than eight and one half inches high by eleven inches wide, clearly readable, stating: "Warning: drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child. Call the Utah Department of Health at (insert most current toll-free number) with questions or for more information" and "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah." The two warning messages shall be in the same font size but different font styles that are no smaller than 36 point bold. The font size for the health department contact information shall be no smaller than 20 point bold.

R81-1-3. General Policies.

(1) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(2) Manner of Paying Fees.

Payment of all fees for licenses, permits, certificates of approval, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(3) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy, or on the department's website at http://www.abc.utah.gov.

(4) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(5) Returned Checks.

(a) The department will assess a $20 charge for any check payable to the department returned for the following reasons:

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (5)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (5)(b), the department may require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis. The determination of when to put a licensee,

permittee, or package agency operator on "cash only" basis and how long the licensee, permittee, or package agency operator remains on "cash only" basis shall be at the discretion of the department and shall be based on the following factors:

(i) dollar amount of the returned check(s);

(ii) the number of returned checks;

(iii) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the department;

(iv) the time necessary to collect the returned check(s); and

(v) any other circumstances.

(d) A returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the department, require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission.

(e) In addition to the remedies listed in Subsections (5)(a), (b), (c) and (d), the department may pursue any legal remedies to effect collection of any returned check.

(6) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

(7) Administrative Handling Fees.

(a) Pursuant to 32B-4-414(1)(b)a person, on a one-time basis, who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move if the person obtains department approval before moving the liquor into the state, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(b) Pursuant to 32B-4-414(1)(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if the person obtains department approval before moving the liquor into the state, the person provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(c) The administrative handling fee to process any request for department approval referenced in subsections (7)(a) and (7)(b) is $20.00.

(8) Case Handling Markup

(a) For purposes of the landed case cost defined in Section 32B-2-304, "cost of the product" includes a case handling markup determined by the department.

(b) If a manufacturer and the Department have agreed to allow the manufacturer to ship an alcoholic beverage directly to a state store or package agency without being received and stored by the Department in the Department's warehouse, the manufacturer shall receive a credit equaling the case handling markup for the product that is not warehoused by the Department.

(c) The Department shall collect and remit the case handling markup as outlined in Utah Code Ann. Section 32B-2-304.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

R81-1-5. Notice of Public Hearings and Meetings.

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made as provided in Section 52-4-202.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-202.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32B-2-202(1)(c)(i), 32B-2-202(1) and (3), 32B-2-202(2)(b) and (c), and 32B-3-101 to -207. These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32B-3-101 to -207 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32B-9-204 and -305.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63G, Chapter 4 or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee or permittee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded, encouraged, or intentionally aided another to engage in the violation.

(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a $25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine for the licensee or permittee, and a letter of admonishment to a $25 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $25,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine for the licensee or permittee, and a letter of admonishment to a $50 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $1000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $2000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a $2000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a $500 to $3000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $9000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or

agent.

(iii) More than two occurrences of the same type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a $9000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32B, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $25,000 fine to the licensee or permittee and up to a $300 fine for the officer, employee or agent.

(ii) More than one occurrence of the same type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or a $3000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days	Revoke License
Minor				
1st	X X			
2nd		100 to 500		
3rd		200 to 500	1 to 5	
Over 3		500 to 25,000	6 to	X
Moderate				
1st	X	to 1,000		
2nd		500 to 1,000	3 to 10	
3rd		1,000 to 2,000	10 to 20	
Over 3		2,000 to 25,000	15 to	X
Serious				
1st		500 to 3,000	5 to 30	
2nd		1,000 to 9,000	10 to 90	
Over 2		9,000 to 25,000	15 to	X
Grave				
1st		1,000 to 25,000	10 to	X
Over 1		3,000 to 25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days
Minor			
1st	X X		
2nd	X	to 25	
3rd		to 50	1 to 5
Over 3		to 75	6 to 10
Moderate			
1st	X	to 50	
2nd		to 75	3 to 10
3rd		to 100	10 to 20
Over 3		to 150	15 to 30
Serious			
1st		to 100	5 to 30
2nd		to 150	10 to 90
Over 2		to 500	15 to 120
Grave			
1st		to 300	10 to 120
Over 1		to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Examples of mitigating circumstances are:

(i) no prior violation history;

(ii) good faith effort to prevent a violation;

(iii) existence of written policies governing employee conduct;

(iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility; and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Examples of aggravating circumstances are:

(i) prior warnings about compliance problems;

(ii) prior violation history;

(iii) lack of written policies governing employee conduct;

(iv) multiple violations during the course of the investigation;

(v) efforts to conceal a violation;

(vi) intentional nature of the violation;

(vii) the violation involved more than one patron or employee;

(viii) the violation involved a minor and, if so, the age of the minor; and

(ix) whether the violation resulted in injury or death.

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative Rulemaking Act. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (January 2012 edition) and is

incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32B-2-202(1)(c)(i)and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63G-4-502.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), and Sections 32B-3-102 to -207.

(e) Penalties.

(i) This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.

(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R81-1-24, the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.

(iii) Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32B-4-504.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.

(j) Presiding Officers.

(i) The commission or the director may appoint presiding officers to receive evidence in disciplinary proceedings, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(ii) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iv) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(v) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in Sections 32B-1-102 and Title 63G, Chapter 4 apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings

necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63G-4-102(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a presiding officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under section (2)(b)(i);

(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or

(C) the commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the department determines that it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a presiding officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. ";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63G-4-202 and -203 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32B-3-205(1)(c)if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32B-3-205(5) if revocation is sought by the department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the department shall notify the respondent and the presiding officer whether it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the department does not seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the department does seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The presiding officer shall notify the respondent and department in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order.

The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32B-3-204(4) and, 63G-4-203(1)(i) containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63G-4-401, -402, -404, and -405 and 32B-3-207.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(H) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(I) A copy of the commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63G-4-402,

-404, and -405, and 32B-3-207.

(4) The Formal Process.

(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):

(i) the presiding officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action;

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the department. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. ";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

(iv) the presiding officer may permit or require pleadings in addition to the notice of agency action and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.

(v) the presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded;

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond,

conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(xi) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32B-3-203(3)(b) and (c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

(B) A copy of the presiding officer's order shall be promptly mailed to the parties.

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the parties to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32B-3-204(4) and 63G-4-208(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of

fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32B-3-207 and 63G-4-403, -404, -405.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(H) A copy of the commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63G-4-403, -404, and 405, and Section 32B-3-207.

R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32B-2-202(1)(c) and (e), and the commission's authority to adjudicate violations of Title 32B.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) A dispensing system is approved by the department if it meets the following minimum requirements:

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces;

(b) has a meter which counts the number of pours dispensed; and

(c) The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Licensee Responsibility.

(a) The licensee is responsible for verifying that the system, when initially installed, meets the specifications which listed in subsection (1). Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the approved specifications. Failure to maintain the system may be grounds for suspension or revocation of the

licensee's liquor license.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 31.261-31.262 and 26 USC Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32B-1-102(75) shall include the location of any licensed restaurant, limited restaurant, beer-only restaurant, club, or recreational amenity on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license under 32B-8. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32B-1-102(92) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every

individual of every new and renewing licensee under title 32B who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63G-2-204 and 63A-12-104 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63G-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63G-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63G-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Grievance Procedures.

(1) Authority and Purpose.

(a) This rule is made under authority of Section 32B-2-202 and 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Alcoholic Beverage Control, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(b) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.

(2) Definitions.

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

(b) "Department" means the Department of Alcoholic Beverage Control.

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

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

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

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

(g) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(h) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department. A "qualified individual" is also an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

(3) Filing of Complaints.

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

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

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

(d) Each complaint shall:

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

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

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

(iv) describe the action and accommodation desired; and

(v) be signed by the complainant or by his legal representative.

(e) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

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

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

(4) Investigation of Complaints.

(a) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R81-1-14(3)(d) and (g) of this rule if it is not made available by the complainant.

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

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

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

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(5) Recommendation and Decision.

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

(b) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

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

(6) Appeals.

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

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

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

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

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

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

(ii) require facility modifications; or

(iii) require reassignment to a different position.

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

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

(7) Record Classification.

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

(b) After issuing a decision under Section R81-1-14(5)or

a final decision upon appeal under Section R81-1-14(6), portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Subsection 63G-2-302(1)(b) or "controlled" under Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R81-1-14(7)(b), classified as "private."

(8) Relationship to Other Laws. This rule does not prohibit or limit the use of remedies available to individuals under:

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

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

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

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63G-4-503, and as authorized by Section 32B-2-202, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act generally disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

R81-1-17. Advertising.

(1) Authority and General Purpose. This rule is pursuant to Section 32B-4-510(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32B.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the

publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32B-1-102(55), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32B-3-205, and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32B-4-304 and -510.

R81-1-19. Emergency Meetings.

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63G-3-201 and 32B-2-202.

(3) Procedure. The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the commission of the proposed meeting and a majority of the convened commission votes in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted

as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

R81-1-20. Electronic Meetings.

(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, 63G-3-201 and 32B-2-202.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission 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 commission not participating electronically or telephonically 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 provided to at least one newspaper of general circulation within the state and to a local media correspondent. 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 commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner 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 commissioner 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 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 Alcoholic Beverage Control, 1625 South 900 West, 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.

R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32B-2-202, and its authority to establish guidelines for the advertising of alcoholic beverages under 32B-4-510.

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32B-4-703 to -705, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32B-4-703 to -705. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32B-4-704(4). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32B-4-704(4)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32B-4-704(3)(b)(i)(B).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do not apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact

on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house" provisions of 32B-4-704:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of $10.00 per case).

(C) The product will be marked up using the department's standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department's current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers.

This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

R81-1-24. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" are as defined in 32B-1-102(48).

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32B-15; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32B-1-104 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32B-2-202 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32B-1-501 to -506 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or social club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or social club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity"means a state of dress as defined in 32B-1-102(102).

(b) "Sexually-oriented entertainer" means a person defined in 32B-1-102(93).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or social club.

(b) A tavern or social club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32B-1-502 to -506;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or social club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or social club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or social club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32B-2-202 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) 32B-1-301 to -307 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and

(c) 32B-1-301 to -307 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety (hereafter "B.C.I.").

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii), and (3)(b) through (h), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi), and (vii), (3)(b) through (h), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to submit a fingerprint card with the department or provide a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under 32B-9 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32B-9 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(vii) An applicant for employment with benefits with the department shall be required to submit a fingerprint card and consent to a fingerprint criminal background check only if the department has made the decision to offer the applicant employment with the department.

(b) An application that requires B.C.I. or F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the required B.C.I. or F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which a B.C.I. or an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. or F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required B.C.I. or F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the B.C.I. or F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the B.C.I. or F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

(h) An applicant for employment with benefits with the department that requires a B.C.I. or an F.B.I. criminal history background report may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iii) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

R81-1-27. Label Approvals.

(1) Authority. This rule is pursuant to 32B-1-606(2)(c) and (d) and 32B-1-607 which give the commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act, 32A-1-801 to -809.

(2) Purpose.

(a) Pursuant to 32B-1-604, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first approved by the department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in 32B-1-604 to -606.

(c) This rule:

(i) establishes administrative fees that may be assessed by the department to process applications for the approval of malt beverage labels and packaging;

(ii) provides supplemental procedures for applying for and processing label and package approvals;

(iii) defines the meaning of certain terms in the Malted Beverages Act; and

(iv) establishes the format of certain words and phrases required on the containers and packaging of certain flavored malt beverages.

(3) Application of Rule.

(a) The department shall assess a fee of $30.00 made payable to the "Department of Alcoholic Beverage Control" for each application submitted for label and packaging approval.

(b) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau (Form TTB F5100.31) with the exact size label if printed in color.

(c) Because a heavy beer and flavored malt beverage product may be sold only by the department to consumers and on-premise retailers in this state, label approval for a heavy beer or flavored malt beverage need not be applied for until the department has decided to list the product for sale in this state. Any listing will be contingent on label and packaging approval.

(d) An application for approval is required for any revision of a previously approved label.

(e) An application for approval is required for any revision to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(f) An application for approval is not required for any revision to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.

(g) Pursuant to 32B-1-605(6):

(i) the department may revoke any label and packaging that does not comply with the label and packaging requirements of the Malted Beverage Act;

(ii) the department may delist any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that does not meet the label and packaging requirements of the Malted Beverage Act;

(iii) any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that did not receive prior label and packaging approval need not submit an application for label and packaging approval if the label and packaging meet the requirements of the Malted Beverage Act.

(h) Pursuant to 32B-1-606, a flavored malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) on the front of the container and packaging;

(iv) in a format that is readily legible;

(v) separate and apart from any descriptive or explanatory information; and

(vi) in a type size no smaller than 3 millimeters wide and 3 millimeters high.

(i) Pursuant to 32B-1-606, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The alcohol content statement may not be abbreviated, but shall use the complete words "alcohol," "volume," or "weight". The words in the alcohol content statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) in a format that is readily legible; and

(iv) separate and apart from any descriptive or explanatory information.

R81-1-28. Special Commission Meetings - Fees.

(1) Authority. This rule is pursuant to 32B-2-201(10) that gives the commission authority to hold special commission meetings; and 32B-2-202(1)that gives the commission authority to establish procedures for granting and denying permits and to prescribe fees payable for permits.

(2) Purpose. This rule authorizes the commission to assess an administrative fee in addition to the regular permit fee to cover the additional administrative costs of convening a special commission meeting to consider the application of an applicant for a single event permit or temporary special event beer permit who failed to timely submit the permit application to be considered at the commission's regularly scheduled monthly meeting.

(3) Application of Rule.

(a) If the commission agrees to convene a special commission meeting to accommodate an applicant described in Section (2), the commission shall assess an administrative fee of $350 in addition to the regular permit fee.

(b) The administrative fee in Section (3)(a) shall be used to offset the costs of convening the special meeting including, but not limited to:

(i) department costs associated with scheduling, arranging, and providing notice of the special meeting;

(ii) department costs associated with any emergency or electronic meeting held pursuant to R81-1-19 and -20;

(iii) payment of per diem and expenses to commissioners; and

(iv) any other costs incurred.

(c) The administrative fee in Section (3)(a) shall be paid prior to the convening of the special commission meeting.

(d) The administrative fee in Section (3)(a) is a non-refundable fee.

R81-1-29. Factors for Granting Licenses.

(1) Definition. For purposes of this rule, "license" includes a license, permit, certificate of approval, and package agency.

(2) Authority. This rule is pursuant to 32B-2-202(1)(c)which gives the commission the authority to set policy by written rules that establish criteria and procedures for granting a license. It is also based on 32B-5-203(2)(f) that gives the commission the authority to consider non-statutory factors or circumstances the commission considers necessary in granting a license.

(3) Purpose. This rule provides a list of non-statutory factors the commission considers in granting a license.

(4) Application of Rule. In addition to any statutory factor for granting a license, the commission also may consider the following non-statutory factors:

(a) availability of retail licenses under a quota;

(b) length of time the applicant has waited for a retail license;

(c) the scheduled opening date;

(d) whether the applicant is a seasonal business;

(e) whether the location has been previously licensed or is a new location;

(f) whether the application involves a change of ownership of an existing location;

(g) whether the applicant holds other alcohol licenses at this or other locations;

(h) whether the applicant has a violation history or a pending violation;

(i) projected alcohol sales as it relates to the extent to which the retail alcohol license will be utilized;

(j) whether the applicant is a small or entrepreneurial business that would benefit the community in which it would be located;

(k) nature of entertainment the applicant proposes; and

(l) public input in support or opposition to granting the retail license.

R81-1-30. Draft Beer Sales/Minors on Premises.

A state license that authorizes the sale of beer on the premises also authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. cafe, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32B-1-102(112). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.

R81-1-31. Duties of Commission Subcommittees.

(1) This rule is promulgated pursuant to Section 32B-2-

201.5 and shall govern the duties of the two commission subcommittees, Compliance Licensing and Enforcement Subcommittee and the Operations and Procurement Subcommittee.

(2) The Compliance Licensing and Enforcement Subcommittee will review and discuss items related to compliance, licensing and enforcement and make recommendations to the full commission on those items.

(3) The Operations and Procurement Subcommittee will review and discuss items related to operations and procurement and make recommendations to the full commission on those items.

(4) If a quorum of the full commission is present, the subcommittee may act on all agenda action items.

(5) If a quorum of the full commission is not present, a recommendation on action items can be presented to a quorum of the commission for action without discussion if:

(a) A quorum of the subcommittee is present;

(b) There is a unanimous vote on the recommendation; and

(c) A member of the full commission does not request discussion on the items of recommendation.

(6) A subcommittee quorum is the majority of standing members.

KEY: alcoholic beverages
October 30, 2013 **32B-2-201(10)**
Notice of Continuation May 10, 2011 **32B-2-202**
32B-3-203(3)(c)
32B-5-304(1)
32B-1-305
32B-1-306
32B-1-307
32B-1-607
32B-1-304(1)(a)
32B-6-702
32B-6-805(3)
32B-9-204(4)
32B-4-414(1)(b) and (c)

R156. Commerce, Occupational and Professional Licensing.
R156-55d. Burglar Alarm Licensing Rule.
R156-55d-101. Title.

This rule is known as the "Burglar Alarm Licensing Rule".

R156-55d-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or this rule:

(1) "Immediate supervision", as used in this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervision person, so as to ensure that the end result complies with applicable standards.

(2) "Employee", as used in Subsections 58-55-102(17) and R156-55d-102(1), means an individual providing labor services for compensation who has federal and state taxes withheld and worker's compensation and unemployment insurance provided by the individual's employer.

(3) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55d-502.

R156-55d-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55d-104. Organization - Relationship to Rule R156-1.

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

R156-55d-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an alarm company shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing:

(i) the fingerprints of the applicant's qualifying agent;

(ii) the fingerprints of each of the applicant's officers, directors, shareholders owning more than 5% of the stock of the company, partners, and proprietors; and

(iii) the fingerprints of each of the applicant's management personnel who will have responsibility for any of the company's operations as an alarm company within the state;

(c) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each individual for whom fingerprints are required under Subsection (1)(b); and

(d) a copy of a current photo identification for each individual for whom fingerprints are required under Subsection (1)(b). Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of American or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

(2) An application for license as an alarm company agent shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing the fingerprints of the applicant;

(c) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant; and

(d) a copy of a current photo identification for the applicant. Acceptable identification shall include:

(i) a driver license issued by a state of the United States of America or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

R156-55d-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i) are established as follows:

(1) an applicant shall have within the past ten years:

(a) not less than 6,000 hours of experience in a lawfully operated alarm company business of which not less than 2,000 hours shall have been in a managerial, supervisory, or administrative position; or

(b) not less than 6,000 hours of experience in a lawfully operated alarm company business combined with not less than 2,000 hours of managerial, supervisory, or administrative experience in a lawfully operated construction company;

(2) all experience under Subsection (1) shall be as an employee and under the immediate supervision of the applicant's employer;

(3) all experience must be obtained while lawfully engaged as an alarm company agent and working for a lawfully operated burglar alarm company;

(4) 2,000 hours of work experience constitutes one year (12 months) of work experience;

(5) an applicant may claim no more than 2,000 hours of work experience in any 12 month period; and

(6) no credit shall be given for experience obtained illegally.

R156-55d-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i)(C) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Law and Rule Examination with a score of not less than 75%;

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%; and

(3) an applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure, up to three failures; and

(b) no sooner than six months following any failure thereafter.

R156-55d-302e. Qualifications for Licensure - Insurance Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the insurance requirements for licensure as an alarm company in Section 58-55-302(3)(k)(x)(A) are defined, clarified, or established as follows:

(1) an applicant for an alarm company license shall file with the Division a "certificate of insurance" issued by an insurance company or agent licensed in the state demonstrating the applicant is covered by comprehensive public liability coverage in an amount of not less than $300,000 for each incident, and not less than $1,000,000 in total;

(2) the terms and conditions of the policy of insurance coverage shall provide that the Division shall be notified if the

insurance coverage terminates for any reason; and

(3) all licensed alarm companies shall have available on file and shall present to the Division upon demand, evidence of insurance coverage meeting the requirements of this section for all periods of time in which the alarm company is licensed in this state as an alarm company.

R156-55d-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-55-302(3)(k)(vii) and (3)(l)(iii), the following is a list of criminal convictions which may disqualify a person from obtaining or holding a burglar alarm company or a burglar alarm company agent's license:

(a) crimes against a person as defined in Title 76, Chapter 5, Parts 1 and 2;

(b) theft/larceny, including retail theft, as defined in Title 76, Chapter 6;

(c) sex offenses as defined in Title 76, Chapter 5, Part 4;

(d) any offense involving controlled substances;

(e) fraud;

(f) forgery;

(g) perjury, obstructing justice and tampering with evidence;

(h) conspiracy to commit any of the offenses listed herein;

(i) burglary

(j) escape from jail, prison or custody;

(k) false or bogus checks;

(l) pornography;

(m) any attempt to commit any of the above offenses; or

(n) two or more convictions for driving under the influence of alcohol within the last three years.

(2) Applications for licensure or renewal of licensure shall be considered on a case by case basis taking into consideration the following:

(a) the conduct involved;

(b) the potential or actual injury caused by the applicant's conduct; and

(c) the existence of aggravating or mitigating factors.

R156-55d-303. Renewal Cycle - Procedure.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Section R156-1-308a(1).

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

R156-55d-304. Renewal Requirement - Demonstration of Clear Criminal History.

(1) In accordance with Subsections 58-1-203(1), 58-1-308(3)(b), and 58-55-302(4), there is created as a requirement for renewal or reinstatement of any license of an alarm company or alarm company agent a demonstration of clear criminal history for each alarm company qualifying agent and for each alarm company agent.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses the applicant has a criminal history, the Division shall evaluate the criminal history in accordance with Sections 58-55-302 and R156-5d-302f to determine appropriate licensure action.

R156-55d-306. Change of Qualifying Agent.

In accordance with Subsection 58-55-304(6), an alarm company whose qualifier has ceased association or employment shall file with the Division an application for change of qualifier on forms provided by the Division accompanied by a record of criminal history or certification of no record of criminal history, fee, fingerprint cards, and copy of an identification as required under Subsection R156-55d-302a(1).

R156-55d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as an alarm company to notify the Division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent as required under Section R156-55d-306;

(2) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section R156-55d-601;

(3) failing as an alarm agent to carry or display a copy of his Electronic Security Association (ESA), formerly known as the National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training as required under Section R156-55d-603;

(4) employing as an alarm company a qualifying agent or alarm company agent knowing that individual has engaged in conduct inconsistent with the duties and responsibilities of an alarm company agent.

(5) failing to comply with operating standards established by rule;

(6) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or a settlement or agreement whereby an individual has entered into participation as a first offender, or an action of deferred adjudication, or other program or arrangement where judgment or conviction is withheld;

(7) making false, misleading, deceptive, fraudulent, or exaggerated claims by an alarm company agent; and

(8) an alarm business or company having a residential or commercial false alarm rate 100% above the average of the residential or commercial false alarm rate of the municipality or county jurisdiction in which the alarm business or company's alarm systems are located.

R156-55d-503. Administrative Penalties.

The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted and incorporated by reference.

R156-55d-601. Display of License.

An alarm company agent shall carry on his person at all times while acting as an alarm company agent a copy of his license and shall display that license upon the request of any person to whom the agent is representing himself as an alarm company agent, and upon the request of any law enforcement officer or representative of the Division.

R156-55d-602. Operating Standards - Alarm Equipment.

In accordance with Subsection 58-55-308(1), the following standards shall apply with respect to equipment and devices assembled as an alarm system:

(1) An alarm system installed in a business or public building shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for alarm system equipment.

(2) An alarm system installed in a residence shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for residence alarm systems.

R156-55d-603. Operating Standards - Alarm Installer.

In accordance with Subsection 58-55-308(1), the operating

standards for the installer of an alarm system include the following:

(1) An alarm agent must be fully trained in the installation of an alarm system in accordance with the Electronic Security Association (ESA), formerly known as the National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training requirements prior to the alarm agent installing any alarm system in any residence, business, or public building within the state.

(2) An alarm agent upon receiving initial licensure may work under the direct supervision of an alarm agent who has level one certification for a period of six months from the time of initial licensure without being required to hold a level one certificate.

(3) An alarm agent shall carry evidence of the NBFAA level one certification or equivalent training with him at all times.

R156-55d-604. Operating Standards - Alarm System User Training.

In accordance with Subsection 58-55-308(1), the operating standards for the installation of an alarm system including the following:

(1) Upon completion of the installation of an alarm system by an alarm business or company, the installing alarm agent shall review with the alarm user, or in the case of a company, its employees, the operation of the alarm system to ensure that the user understands the function of the alarm system.

(2) The alarm business or company shall maintain training records, including installer and user false alarm prevention checklists, the dates of the training and the location of the training on each alarm system installed. These records shall be maintained in the files of the alarm business or company for at least three years from the date of the training.

KEY: licensing, alarm company, burglar alarms

October 29, 2013	**58-55-101**
Notice of Continuation February 7, 2012	**58-1-106(1)(a)**
	58-1-202(1)(a)
	58-55-302(3)(k)
	58-55-302(3)(l)
	58-55-302(4)
	58-55-308

R156. Commerce, Occupational and Professional Licensing.
R156-60. Mental Health Professional Practice Act Rule.
R156-60-101. Title.

This rule is known as the "Mental Health Professional Practice Act Rule."

R156-60-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 or Fourth Edition: DSM-IV published by the American Psychiatric Association;

(b) 2013 ICD-9-CM for Physicians, Volumes 1 and 2 Professional Edition published by the American Medical Association; or

(c) ICD-10-CM 2013: The Complete Official Draft Code Set published by the American Medical Association.

(2) "Client or patient" means an individual who, when competent requests, or when not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist agrees verbally or in writing to provide professional services to that individual, or without an overt agreement does in fact provide professional services to that individual.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-60-205(1)(f), 58-60-305(1)(f), and 58-60-405(1)(f), means:

(a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or

(b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:

(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:

(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;

(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;

(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;

(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;

(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and

(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 100 hour direct supervision requirement; and

(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.

(4) "Employee" means an individual who is or should be treated as a W-2 employee by the Internal Revenue Service.

(5) "General supervision" means that the supervisor is available for consultation with the supervisee by personal face to face contact, or direct voice contact by telephone, radio, or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

R156-60-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 60.

R156-60-104. Organization - Relationship to Rule R156-1.

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

R156-60-502. Unprofessional Conduct.

"Unprofessional conduct" includes when providing services remotely:

(1) failing to practice according to professional standards of care in the delivery of services remotely;

(2) failing to protect the security of electronic, confidential data and information; or

(3) failing to appropriately store and dispose of electronic, confidential data and information.

KEY: licensing, mental health, therapists

October 22, 2013	**58-1-106(1)(a)**
Notice of Continuation July 27, 2009	**58-1-202(1)(a)**
	58-60-101

R156. Commerce, Occupational and Professional Licensing.
R156-63a. Security Personnel Licensing Act Contract Security Rule.
R156-63a-101. Title.

This rule is known as the "Security Personnel Licensing Act Contract Security Rule."

R156-63a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training programs" means basic education and training that meets the standards set forth in Sections R156-63a-602 and R156-63a-603 that is approved by the Division.

(2) "Approved basic firearms education and training program" means basic firearms education and training that meets the standards set forth in Section R156-63a-604 that is approved by the Division.

(3) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(4) "Contract security company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed.

(5) "Contract security company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well being of personnel employed by, or animals owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(6) "Compensated", as used in Subsection 58-63-302(1)(c)(iii)(A), means remuneration in the form of W-2 wages unless the qualifying agent is an owner of a contract security or armored car company, in which case "compensated" means the owner's profit distributions or dividends.

(7) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(8) "Employee" means an individual providing services in the security guard industry for compensation when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(9) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63a-302a(1)(b) means a manager, director, or administrator of a contract security company.

(10) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63a-304.

(11) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(12) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or contract security company logo that clips on to or is placed over the front pocket.

(13) "Supervised on-the-job training" means training of an armed or unarmed private security officer under the supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(14) "Supervision" means general supervision as defined in Section R156-1-102a(4)(c).

(15) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(c), in Section R156-63a-502.

R156-63a-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 63.

R156-63a-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.

R156-63a-201. Advisory Peer Committee created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Education Advisory Committee to the Security Services Licensing Board consisting of:

(a) one member who is an officer, director, manager or trainer of a contract security company;

(b) one member who is an officer, director, manager or trainer of an armored car company;

(c) one member who is an armored car security officer or a contract security officer;

(d) one member representing the general public; and

(e) one member who is a trainer associated with the Utah Peace Officers Association.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities regarding the acceptability of educational programs requesting approval from the Division and periodically reviewing all approved basic education and training programs and firearm training programs regarding current curriculum requirements.

(3) The Education Advisory Committee shall consider, when advising the Board of the acceptability of an educational program, the following:

(a) whether the educational program meets the basic education and training requirements of Sections R156-63a-603 and R156-63b-603; and

(b) whether the educational program meets the basic firearm training program requirements of Sections R156-63a-604 and R156-63b-604.

R156-63a-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying

agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(c) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(d) a copy of the driver license or identification card issued by a state or territory of the United States or the District of Columbia to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armed or unarmed private security officer shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or identification card issued by a state or territory of the United States or the District of Columbia to the applicant.

(3) Applications for change in licensure classification from unarmed to armed private security officer shall only require the following additional documentation:

(a) the required firearms training pursuant to Section 58-63-604; and

(b) an additional criminal history background check pursuant to Section 58-63-302 and Subsections R156-63a-302a(2).

R156-63a-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) An applicant for licensure as an armed private security officer shall successfully complete a basic education and training program and a firearms training program approved by the Division, the content of which is set forth in Sections R156-63a-603 and R156-63a-604.

(2) An applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the Division, the content of which is set forth in Section R156-63a-603.

R156-63a-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is a contract security company shall obtain a passing score of at least 75% on the Utah Security Personnel Qualifying Agent's Examination.

(2) An applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 80% on the basic education and training final examination approved by the Division and administered by each provider of basic education and training.

R156-63a-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;
(b) assault and battery;
(c) personal injury;
(d) false arrest;
(e) libel and slander;
(f) invasion of privacy;
(g) broad form property damage;
(h) damage to property in the care, custody or control of the contract security company; and
(i) errors and omissions.

(2) The required insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All contract security companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63a-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

An armed private security officer must be 18 years of age or older at the time of submitting an application for licensure in accordance with Subsections 76-10-509(1) and 76-10-509.4.

R156-63a-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h), (2)(c) and (3)(c), the following is a list of criminal convictions which may disqualify a person from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
(b) theft, including retail theft, as defined in Title 76;
(c) larceny;
(d) sex offenses as defined in Title 76, Chapter 5, Part 4;
(e) any offense involving controlled dangerous substances;
(f) fraud;
(g) extortion;
(h) treason;
(i) forgery;
(j) arson;
(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;

(s) desertion;
(t) pornography;
(u) two or more convictions for driving under the influence of alcohol within the last three years; and
(v) any attempt to commit any of the above offenses.
(2) Where not automatically disqualified pursuant to Subsections 58-63-302(1)(a), (2)(c) and (3)(c), applications for licensure or renewal of licensure in which the applicant, or in the case of a contract security company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis as defined in Section R156-1-302.

R156-63a-302g. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

In accordance with Subsection 58-63-310, upon receipt of a complete application for licensure as an unarmed private security officer or as an armed private security officer, the Division may immediately issue an interim permit to the applicant if the applicant meets the following criteria:
(1) the applicant submits with the applicant's application an official criminal history report from the Bureau of Criminal Identification showing "No Criminal Record Found";
(2) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application; and
(3) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation.

R156-63a-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 63 is established by rule in Section R156-1-308a.
(2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-63a-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.
(2) Armed and unarmed private security officers shall complete 16 hours of continuing education every two years consisting of formal classroom education that covers:
(a) company operational procedures manual;
(b) applicable state laws and rules;
(c) legal powers and limitations of private security officers;
(d) observation and reporting techniques;
(e) ethics; and
(f) emergency techniques.
(3) In addition to the required 16 hours of continuing education, armed private security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63a-304(2). The continuing firearms education and training shall include as a minimum:
(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and
(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.
(4) An individual holding a current armed private security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.
(5) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.
(6) Each licensee shall maintain documentation showing compliance with the requirements above.
(7) The continuing education course provider shall provide course attendees who complete the continuing education course with a course completion certificate.
(8) The certificate shall contain:
(a) the name of the instructor;
(b) the date the course was taken;
(c) the location where the course was taken;
(d) the title of the course;
(e) the name of the course provider; and
(f) the number of continuing education hours completed.

R156-63a-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.
(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.
(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63a-302f to determine appropriate licensure action.

R156-63a-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-504.

R156-63a-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:
(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;
(2) employing an unarmed or armed private security officer, as an on-the-job trainee exempted from licensure pursuant to Section R156-63a-307, who has been convicted of:
(a) a felony;
(b) a misdemeanor crime of moral turpitude; or
(c) a crime that when considered with the duties and functions of an unarmed or armed private security officer by the Division and Board indicates that the best interests of the public are not served;
(3) employing an unarmed or armed private security officer who fails to meet the requirements of Section R156-63a-307;

(4) utilizing a vehicle whose markings, lighting, and/or signal devices imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(5) utilizing a vehicle with an emergency lighting system which violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(6) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(7) being incompetent or negligent as an unarmed private security officer, an armed private security officer or by a contract security company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(8) failing as a contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees to the extent that the public health and safety are at risk;

(9) failing to immediately notify the Division of the cancellation of the contract security company's insurance policy;

(10) failing as a contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63a-613; and

(11) wearing an uniform, insignia, badge or displaying a license that would lead a reasonable person to believe that an individual is connected with a contract security company, when not employed as an armed or unarmed private security officer by a contract security company.

R156-63a-503. Administrative Penalties.

(1) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Contract Security Company	Armed or Unarmed Security Officer
58-63-501(1)	$ 800.00	N/A
58-63-501(4)	$ 800.00	$ 500.00
SECOND OFFENSE		
58-63-501(1)	$1,600.00	$1,000.00
58-63-501(4)	$1,600.00	$1,000.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-63a-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63a-604.

(2) Shotguns and rifles, owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63a-602. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the Division as an approved basic education and training program for armed private security officers and unarmed private security officers, the applicant for program approval shall meet the following standards:

(1) The applicant shall pay a fee for the approval of the education program.

(2) The training method is documented in a written education and training manual which includes training performance objectives and a four hour instructor training program.

(3) The program curriculum for armed private security officers includes content as established in Sections R156-63a-603 and R156-63a-604.

(4) The program for unarmed private security officers includes content as established in Section R156-63a-603.

(5) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, where there is a direct student-teacher relationship. All instructors providing the basic classroom instruction shall:

(a) have at least three years of supervisory experience reasonably related to providing contract security services; and

(b) have completed a four hour instructor training program which shall include the following criteria:

(i) motivation and the learning process;

(ii) teacher preparation and teaching methods;

(iii) classroom management;

(iv) testing; and

(v) instructional evaluation.

(6) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the Division, in collaboration with the Board, to be equivalent.

(7) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(8) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(9) Instructors, who present continuing education hours and are licensed armed or unarmed private security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63a-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

(1) An approved basic education and training program for armed and unarmed private security officers shall have the following components:

(a) at least 24 hours of basic classroom instruction including the following:

(i) one hour covering the nature and role of private security, including:

(A) the limits of a private security officer's authority;

(B) the scope of authority of a private security officer;

(C) the civil liability of a private security officer; and

(D) the private security officer's role in today's society;

(ii) three hours covering state laws and rules applicable to private security;

(iii) three hours covering the legal responsibilities of private security, including:

(A) constitutional law;

(B) search and seizure; and

(C) other such topics;

(iv) four hours of situational response evaluations, including:

(A) protecting and securing crime or accident scenes;

(B) notifying of internal and external agencies; and

(C) controlling information;

(v) one hour covering security ethics;

(vi) three hours covering the use of force, emphasizing the de-escalation of force and alternatives to using force;

(vii) two hours covering documentation and report writing, including:

(A) preparing witness statements;

(B) performing log maintenance;

(C) exercising control of information;

(D) taking field notes;

(E) organizing information into a report; and

(F) performing basic writing;

(viii) four hours covering patrol techniques, including:

(A) mobile patrol verses fixed post;

(B) accident prevention;

(C) responding to calls and alarms;

(D) security breeches; and

(E) monitoring potential safety hazards;

(ix) two hours covering police and community relations, including fundamental duties and personal appearance of security officers;

(x) one hour covering sexual harassment in the work place; and

(xi) a final examination which competently examines the student on the subjects included in the 24 hours of basic classroom instruction in the approved program of education and training.

(2) A student may only successfully pass the examination under Subsection (xi) with a minimum score of 80%.

R156-63a-604. Operating Standards - Content of Approved Basic Firearms Training Program for Armed Private Security Officers.

An approved basic firearms training program for armed private security officers shall have the following components:

(1) at least six hours of classroom firearms instruction to include the following:

(a) the firearm and its ammunition;

(b) the care and cleaning of the weapon;

(c) the prohibition against alterations of firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on the range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and a discussion of 18 USC 44 Section 922; and

(n) the instruction that armed private security officers shall not fire their weapon unless there is an eminent threat to life and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving eminent threat to life; and

(2) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment and trigger control; and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63a-605. Operating Standards - Uniform Requirements.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.

(2) Each armed and unarmed private security officer wearing a soft uniform unless assigned to an undercover status shall at a minimum display on the outermost garment of the uniform the name of the contract security company under whom the armed and unarmed private security officer is employed, and the word "Security", "Contract Security", or "Security Officer".

(3) The name of the contract security company and the word "Security" shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(4) Each armed and unarmed private security officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains:

(a) the name or logo of the contract security company under whom the armed or unarmed private security officer is employed; and

(b) the word "Security", "Contract Security", or "Security Officer".

R156-63a-606. Operating Standards - Badges.

(1) At the contract security company's request, an unarmed or armed private security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.

(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63a-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security Companies.

In the event an officer, qualifying agent, director, partner, proprietor, private security officer, or any management personnel having direct responsibility for managing operations of the contract security company has a conviction entered regarding:

(a) a felony;

(b) a misdemeanor crime of moral turpitude; or

(c) a crime that when considered with the functions and duties of an unarmed or armed private security officer by the Division and Board indicates that the best interests of the public are not served, the company shall within ten days of the conviction or notice reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63a-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63a-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver's license whenever performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63a-610. Operating Standards - Vehicles.

(1) All contract security vehicles shall conform to the following requirements:

(a) green, amber, and white are the only colors that may be used in roof mounted light bars facing forward on a contract security vehicle;

(b) green, amber, and red are the only colors that may be used in roof mounted light bars facing rearward on a contract security vehicle;

(c) light bars may only be operated on private property in which the company has a written contract;

(d) light bars may be operated on public highways only when personally directed to do so by a peace officer; and

(e) all contract security vehicles shall meet the requirements of Section 41-6a-1616.

(2) A contract security company or its personnel may not utilize a vehicle whose marking, lighting and signal devices:

(a) display any form of blue lighting;

(b) use a siren in any manner;

(c) display a star or star badge insignia; or

(d) employ any wording that suggests they are connected with law enforcement.

(3) A contract security company vehicle may have a public address system, an air horn, or both.

(4) The word "Security", either alone or in conjunction with the company name, shall appear on each side and the rear of the company vehicle in letters no less than four inches in height and in a color contrasting with the color of the contract security company vehicle and shall be legible from a reasonable distance.

R156-63a-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;

(b) restraining, detaining, and search and seizure;

(c) felony and misdemeanor definitions;

(d) observing and reporting;

(e) ingress and egress control;

(f) natural disaster preparation;

(g) alarm systems, locks, and keys;

(h) radio and telephone communications;

(i) crowd control;

(j) public relations;

(k) personal appearance and demeanor;

(l) bomb threats;

(m) fire prevention;

(n) mental illness;

(o) supervision;

(p) criminal justice system;

(q) code of ethics for private security officers; and

(r) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63a-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63a-613. Operating Standards - Standards of Conduct.

(1) Licensee employed by a contract security company:

(a) pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor shall notify the licensee's employing contract security company within 72 hours of the arrest, charge, or indictment;

(b) within 72 hours after such notification by the employee, the employing contract security company shall notify the Division of the arrest, charge or indictment in writing; and

(c) the written notification shall include the employee's name, the name of the arresting agency, the agency case number, the date and the nature of the criminal offense.

(2) Licensee not employed by a contract security company:

(a) pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer who is not employed by a contract security company shall directly notify the Division in writing within 72 hours of any arrest, charge or indictment above the level of a Class C misdemeanor; and

(b) the written notification shall meet the requirements of Subsection (1)(c).

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58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-63b. Security Personnel Licensing Act Armored Car Rule.
R156-63b-101. Title.

This rule is known as the "Security Personnel Licensing Act Armored Car Rule."

R156-63b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means basic education and training that meets the standards set forth in Sections R156-63b-602 and R156-63b-603 that is approved by the Division.

(2) "Approved basic firearms education and training program" means basic firearms education and training that meets the standards set forth in Section R156-63b-604 that is approved by the Division.

(3) "Armored car company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed.

(4) "Armored car company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or other high value items that require secured delivery from one place to another and are owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(6) "Compensated", as used in Subsection 58-63-302(1)(c)(iii)(A), means remuneration in the form of W-2 wages unless the qualifying agent is an owner of a contract security or armored car company, in which case "compensated" experience means the owner's profit distributions or dividends.

(7) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(8) "Employee" means an individual providing services in the armored car industry for compensation when the amount of compensation is based directly upon the armored car services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(9) "Officer" as used in Subsection 58-63-201(1)(a) means a manager, director, or administrator of an armored car company.

(10) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63b-304.

(11) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of an armored car company who exercises material authority in the conduct of the armored car company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(12) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or armored car company logo that clips onto or is placed over the front pocket.

(13) "Supervised on-the-job training" means training of an armored car security officer under the supervision of a licensed armored car security officer who has been assigned to train and develop the on-the-job trainee.

(14) "Supervision" means general supervision as defined in Section R156-1-102a(4)(c).

(15) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(c), in Section R156-63b-502.

R156-63b-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 63.

R156-63b-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.

R156-63b-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an armored car company shall be accompanied by:

(a) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(c) a copy of the driver license or an identification card issued by a state or territory of the United States or the District of Columbia to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armored car security officer shall be accompanied by:

(a) two fingerprint cards for the applicant;

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(c) a copy of the driver license or identification card issued by a state or territory of the United States or District of Columbia to the applicant.

R156-63b-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established herein. An applicant for licensure as an armored car security officer shall successfully complete a basic education and training program and a firearms training program approved by the Division, the content of which is set forth in Section R156-63b-603.

R156-63b-302c. Qualifications for Licensure - Firearm Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the firearm training requirements for licensure in Subsection 58-63-302(4)(g) are defined, clarified, or established herein. An applicant for licensure as an armored car security officer shall successfully complete a firearms training program approved by the Division, the content of which is set forth in Section R156-63b-604.

R156-63b-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is an armored car company shall obtain a passing score of at least 75% on the Utah Security Personnel Armored Car Qualifying Agent's Examination.

(2) An applicant for licensure as an armored car security officer shall obtain a score of at least 80% on the basic education and training final examination approved by the Division and administered by the provider of basic education and training.

R156-63b-302e. Qualification for Licensure - Liability Insurance for a Armored Car Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as an armored car company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;
(b) assault and battery;
(c) personal injury;
(d) libel and slander;
(e) broad form property damage;
(f) damage to property in the care, custody or control of the armored car company; and
(g) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $500,000 for each incident and not less than $2,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All armored car companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All armored car companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63b-302f. Qualifications for Licensure - Age Requirement for Armored Car Security Officer.

An armored car security officer must be 21 years of age or older at the time of submitting an application for licensure.

R156-63b-302g. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h) and (4)(c), the following is a list of criminal convictions which may disqualify a person from obtaining or holding an armored car security officer license, or an armored car company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
(b) theft, including retail theft, as defined in Title 76;
(c) larceny;
(d) sex offenses as defined in Title 76, Part 4;
(e) any offense involving controlled dangerous substances;
(f) fraud;
(g) extortion;
(h) treason;
(i) forgery;
(j) arson;
(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;
(s) desertion;
(t) pornography;
(u) two or more convictions for driving under the influence of alcohol within the last three years; and
(v) any attempt to commit any of the above offenses.

(2) Where not automatically disqualified pursuant to Subsections 58-63-302(1)(h) and (4)(c), applications for licensure or renewal of licensure in which the applicant, or in the case of an armored car company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis as defined in Section R156-1-302.

R156-63b-302h. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

(1) In accordance with Section 58-63-310, upon receipt of an application for licensure as an armored care security officer, the Division may immediately issue an interim permit to the applicant, if the applicant meets the following criteria:

(a) the applicant submits with his application an official criminal history report from the Bureau of Criminal Identification showing "No Criminal Record Found";

(b) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(c) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation.

R156-63b-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 63 is established by rule in Section R156-1-308a.

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

R156-63b-304. Continuing Education for Armored Car Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armored car security officer.

(2) Armored car security officers shall complete 16 hours of continuing education every two years consisting of formal classroom education that covers:

(a) company operational procedures manual;
(b) applicable state laws and rules;

(c) ethics; and
(d) emergency techniques.
(3) In addition to the required 16 hours of continuing education, armored car security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63b-304(2). The continuing firearms education and training shall include as a minimum:
(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and
(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.
(4) Firearms education and training shall comply with the provisions of Title 15, USC Chapter 85, the Armored Car Industry Reciprocity Act.
(5) An individual holding a current armored car security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.
(6) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.
(7) Each licensee shall maintain documentation showing compliance with the requirements of this section.
(8) The continuing education course provider shall provide course attendees who complete the continuing education course with a course completion certificate.
(9) The certificate shall contain:
(a) the name of the instructor;
(b) the date the course was taken;
(c) the location where the course was taken;
(d) the title of the course;
(e) the name of the course provider; and
(f) the number of continuing education hours completed.

R156-63b-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.
(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.
(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63b-302g to determine appropriate licensure action.

R156-63b-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed armored car company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the armored car company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-504.

R156-63b-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:
(1) making any statement that would reasonably cause another person to believe that an armored car security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;
(2) employing an armored car security officer by an armored car company, as an on-the-job trainee pursuant to Section R156-63b-307, who has been convicted of:
(a) a felony;
(b) a misdemeanor crime of moral turpitude; or
(c) a crime that when considered with the duties and functions of an armored car security officer by the Division and the Board indicates that the best interests of the public are not served;
(3) employing an armored car security officer by an armored car company who fails to meet the requirements of Section R156-63b-307;
(4) utilizing a vehicle whose markings, lighting, and/or signal devices imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;
(5) utilizing a vehicle with an emergency lighting system which violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;
(6) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the armored car security officer is connected with a federal, state, or municipal law enforcement agency;
(7) being incompetent or negligent as an armored car security officer or by an armored car company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;
(8) failing as an armored car company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees to the extent that the public health and safety are at risk;
(9) failing to immediately notify the Division of the cancellation of the armored car company's insurance policy;
(10) failing as an armored car company or an armored car security officer to report a criminal offense pursuant to Section R156-63b-612; and
(11) wearing an uniform, insignia, badge or displaying a license that would lead a reasonable person to believe that an individual is connected with an armored car company, when not employed as an armored car security officer by an armored car company.

R156-63b-503. Administrative Penalties.

(1) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

Violation	Armored Car Company	Armed or Unarmed Armored Car Security Officer
FIRST OFFENSE		
58-63-501(1)	$ 800.00	N/A
58-63-501(4)	$ 800.00	$ 500.00
SECOND OFFENSE		
58-63-501(1)	$1,600.00	$1,000.00
58-63-501(4)	$1,600.00	$1,000.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative

supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-63b-601. Operating Standards - Firearms.

(1) An armored car security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63b-604.

(2) Shotguns and rifles, owned and issued by the armored car company, may be used in situations where they would constitute an appropriate defense for the armored car security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armored car security officer shall not carry a firearm except when acting on official duty as an employee of an armored car company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63b-602. Operating Standards - Approved Basic Education and Training Program for Armored Car Security Officers.

To be designated by the Division as an approved basic education and training program for armored car officers, the following standards shall be met.

(1) The applicant for program approval shall pay a fee for the approval of the education program.

(2) There shall be a written education and training manual which includes performance objectives.

(3) The program for armored car security officers shall provide content as established in Sections R156-63b-603 and R156-63b-604.

(4) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, where there is a direct student-teacher relationship. All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(7) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(8) Instructors, who present continuing education hours and are licensed armored car security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63b-603. Operating Standards - Content of Approved Basic Education and Training Program for Armored Car Security Officers.

An approved basic education and training program for armored car security officers shall have the following components:

(1) at least 24 hours of basic classroom instruction to include the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of an armored car security officer and the armored car security officer's role in today's society;

(b) state laws and rules applicable to armored car security;

(c) legal responsibilities of armored car security, including constitutional law, search and seizure and other such topics;

(d) ethics;

(e) use of force, emphasizing the de-escalation of force and alternatives to using force;

(f) police and community relations, including fundamental duties and the personal appearance of an armored car officer;

(g) sexual harrassment in the work place;

(h) driving policies and procedures, driver training and vehicle orientation;

(i) emergency situation response including terminal security, traffic accidents, robbery situations, homeland security and reducing risk potential through street procedures and tactics, securing robbery scenes, and dealing with the media;

(j) armored operations, including proper paperwork, street control procedures, vehicle transfers, vault procedures, and other proper branch procedures; and

(k) a final examination which competently examines the student on the subjects included in the 24 hours of basic classroom instruction in the approved program of education and training and which the student passes with a minimum score of 80%.

R156-63b-604. Operating Standards - Content of Approved Basic Firearms Training Program for Armored Car Security Officers.

An approved basic firearms training program for armored car security officers shall have the following components:

(1) at least six hours of classroom firearms instruction to include the following:

(a) the firearm and its ammunition;

(b) the care and cleaning of the weapon;

(c) the prohibition against alterations of firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on the range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and a discussion of 18 USC 44 Section 922; and

(n) the instruction that armored car security officers shall

not fire their weapon unless there is an eminent threat to life and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving eminent threat to life; and

(2) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment and trigger control; and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63b-605. Operating Standards - Uniform Requirements.

(1) All armored car security officers while on duty shall wear the uniform of their armored car company employer unless assigned to work undercover.

(2) The name of the armored car company shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(3) Each armored car company officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains the name or logo of the armored car company under whom the armored car security officer is employed.

R156-63b-606. Operating Standards - Badges.

(1) At the armored car company's request, an armored car security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.

(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63b-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Armored Car Security Officer or Manager of Armored Car Companies.

In the event an officer, qualifying agent, director, partner, proprietor, armored car security officer, or any management personnel having direct responsibility for managing operations of the armored car company has a conviction entered regarding:

(a) a felony;

(b) a misdemeanor crime of moral turpitude; or

(c) a crime that when considered with the duties and functions of an armored car security company officer by the Division and the Board indicates that the best interests of the public are not served, the company shall within ten days of the conviction or notice reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63b-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No armored car company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No armored car company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63b-609. Operating Standards - Proper Identification of Armored Car Security Officers.

All armored car security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver's license whenever performing the duties of an armored car security officer and shall exhibit said license and identification upon request.

R156-63b-610. Operating Standards - Operational Procedures Manual.

(1) Each armored car company shall develop and maintain an operational procedures manual which includes the following topics:

(a) felony and misdemeanor definitions;
(b) observing and reporting;
(c) natural disaster preparation;
(d) alarm systems, locks, and keys;
(e) radio and telephone communications;
(f) public relations;
(g) personal appearance and demeanor;
(h) bomb threats;
(i) fire prevention;
(j) mental illness;
(k) supervision;
(l) criminal justice system;
(m) accident scene control;
(n) code of ethics for armored car security officers; and
(o) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63b-611. Operating Standards - Display of License.

The license issued to an armored car company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63b-612. Operating Standards - Notification of Criminal Offense.

(1) Licensee employed by an armored car company:

(a) pursuant to Title 58, Chapter 63, a licensed armored car security officer arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor shall notify the licensee's employing armored car company within 72 hours of the arrest, charge, or indictment;

(b) within 72 hours after such notification by the employee, the employing armored car company shall notify the Division of the arrest, charge or indictment in writing; and

(c) the written notification shall include the employee's name, the name of the arresting agency, the agency case number, the date and the nature of the criminal offense.

(2) Licensee not employed by an armored car company:

(a) pursuant to Title 58, Chapter 63, a licensed armored car security officer who is not employed by an armored car company shall directly notify the Division in writing within 72 hours of any arrest, charge or indictment above the level of a Class C misdemeanor; and

(b) the written notification shall meet the requirements of Subsection (1)(c).

KEY: licensing, security guards, armored car security officers, armored car company

October 29, 2013	**58-1-106(1)(a)**
Notice of Continuation September 9, 2013	**58-1-202(1)(a)**
	58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-83. Online Prescribing, Dispensing, and Facilitation Licensing Act Rule.
R156-83-101. Title.

This rule is known as the "Online Prescribing, Dispensing, and Facilitation Licensing Act Rule".

R156-83-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 83, as used in this rule:

(1) "Active and in good standing", as used in Subsections 58-83-302(1)(d), 58-83-302(2) and 58-83-302(3)(g), and "licensed in good standing", as used in Subsection 58-83-302(3)(a), is as defined in Subsection R156-1-102(1) and also includes that the license has not been subject to disciplinary action in the past three years.

(2) "Submit a copy of the internet facilitator's website", as used in Subsection 58-83-302(4)(g), means submitting the URL for the Internet facilitator's website, a site map, and a printout of the main pages.

(3) "Unprofessional conduct" is further defined, in accordance with Subsections 58-1-203(1)(e) and 58-83-102(9), in Section R156-83-502.

R156-83-103. 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 83.

R156-83-104. 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.

R156-83-302. Qualifications for Licensure - Liability Insurance Requirements.

In accordance with the provisions of Subsection 58-83-302(3)(e), an applicant who is approved for licensure as an online contract pharmacy shall submit proof of public liability insurance in coverage amounts of at least $1,000,000 per occurrence with a policy limit of not less than $3,000,000 by means of a certificate of insurance naming the Division as a certificate holder.

R155-83-303. 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 83 is established by rule in Subsection R156-1-308a(1).

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

R156-83-306. Drugs Approved for Online Prescribing, Dispensing, and Facilitation.

In accordance with Subsection 58-83-306(1)(c), the following legend, non-controlled drugs are approved for prescribing by an online prescriber:

(1) finasteride;
(2) sildenafil citrate;
(3) tadalafil;
(4) vardenafil hydrochloride;
(5) hormonal based contraception (except injectable or implantable methods);
(6) varenicline;
(7) hydroquinone up to 4%;
(8) tretinoin up to 0.1%; and
(9) avanafil.

R156-83-308. Audit Reports.

In accordance with Subsection 58-83-308(3), an initially licensed Internet facilitator licensed under this chapter shall provide quarterly reports to the Division containing the information listed in Subsection 58-83-308(3). The reports are due on the fifteenth day of each quarter, i.e. January 15, April 15, July 15, and October 15. If the Internet facilitator has been licensed for two years, the Board and Division may reduce the audit reports to be due biannually, January 15 and July 15.

R156-83-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as an online facilitator to timely submit quarterly reports to the Division as established in Section R156-83-308;

(2) prescribing any medication to a patient while engaged in practice as an online prescriber without first reviewing a comprehensive health history, making an assessment, or establishing a diagnosis;

(3) prescribing a drug listed in Section R156-83-306 for diagnosis that is not recognized by the Federal Food and Drug Administration to be treated by that prescribed drug;

(4) failing as a licensee to monitor, audit, control or report to the Division any website:

(a) promoting availability of online prescribing and dispensing of any prescriptions; and

(b) marketed in a format suggesting use of the Utah license as a means to induce consumer confidence of a Division approved website;

(5) failing to provide to the Division all website and URL information when conducting business as an online prescriber, pharmacy and internet facilitator;

(6) failing to inform the Division of the name of all physicians writing prescriptions to be filled by the online contract pharmacy;

(7) failing to report to the Division all transactions of prescriptions filled by the online contract pharmacy; and

(8) failing to comply with all audit requirements.

KEY: licensing, online prescribing, internet facilitators
October 22, 2013 **58-1-106(1)(a)**
58-1-202(1)(a)
58-83-101

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) "Deferral" means the postponement or delay for completion of a continuing education requirement due to active military duty or due to the impacts of a state- or federally-declared disaster as specified in R162-2g-306a.

(8) "Desk review" means review of an appraisal:

(a) including verification of the data; but

(b) not including a physical inspection of the property.

(9) "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.

(10) "Division" means the Division of Real Estate of the Department of Commerce.

(11) "Draft report" means an appraisal report that is distributed prior to being completed, as provided in Subsection R162-2g-502b(1).

(12) "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 (12).

(13) "Field review" means review of an appraisal, including:

(a) a physical inspection of the property; and

(b) verification of the data.

(14) "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).

(15) "Person" means an individual or an entity.

(16) "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.

(17) 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.

(18) "Renewal" means reissuing a license or certification upon its expiration for an additional period.

(19) "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.

(20) "School director" means an authorized individual in charge of the educational program at a school.

(21) "Supervisory Appraiser" means a state-certified residential appraiser or a state certified general appraiser that directly supervises a trainee.

(22) "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.

(23) "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.

(24) 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) The15-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)(a) 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:

(i) a completed renewal application as provided by the division;

(ii)(A) evidence that the continuing education requirements listed in this Subsection (2)(b) have been completed; or

(B) evidence sufficient to enable the Division, in its sole discretion, to determine that a deferral of continuing education is appropriate due to the applicant's having been currently or recently:

(I) assigned to active military duty; or

(II) impacted by a state- or federally-declared natural disaster; and

(iii) the applicable non-refundable renewal fee.

(b) The continuing education required under this Subsection (2)(a)(ii)(A) shall be completed during the two-year period preceding the date of application and shall include:

(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.

(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 after deferment of continuing education due to active military service or the impacts of a state- or federally-declared disaster.

(a) An appraiser or trainee who is unable to complete the continuing education requirements to renew a registration, license, or certification due to active military service or because the individual has been impacted by a state- or federally-declared disaster may:

(i) submit a timely application for renewal pursuant to Subsection (2)(a)(ii)(B); and

(ii) request that the application for renewal be conditionally approved, with the expiration date of the applicant's registration, license, or certification extended pursuant to this Subsection (7)(b), pending the completion of the continuing education requirement.

(b) Upon the division's approving a deferral of continuing education, the expiration date of the applicant's registration, license, or certification shall be extended 90 days, during which time the applicant shall:

(i) complete the continuing education required for the renewal; and

(ii) submit proof of the continuing education to the division.

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) current, active licensure or certification as applicable to the pre-licensing course proposed to be taught;
(ii) a minimum of five years active experience in appraising; and
(iii)(A) college or other appropriate courses specific to the topic proposed to be taught; or
(B) other experience acceptable to the board in the topic proposed to be taught;
(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, and 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

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	40 hours
(ii) over 100 units	50 hours
(b) hotel or motels:	
(i) 50 units or fewer	30 hours
(ii) 51-150 units	40 hours
(iii) over 150 units	50 hours
(c) nursing home, rest home, care facilities:	
(i) fewer than 80 beds	40 hours
(ii) over 80 beds	50 hours
(d) industrial or warehouse building:	
(i) smaller than 20,000 square feet	30 hours
(ii) larger than 20,000 square feet, single tenant	40 hours
(iii) larger than 20,000 square feet, multiple tenants	50 hours
(e) office buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) larger than 10,000 square feet, single tenant	40 hours
(iii) larger than 10,000 square feet, multiple tenants	50 hours
(f) entire condominium projects, using income approach to value:	
(i) 5- to 30-unit project	30 hours
(ii) 31- or more-unit project	50 hours
(g) retail buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) larger than 10,000 square feet, single tenant	40 hours
(iii) larger than 10,000 square feet, multiple tenants	50 hours
(h) commercial, multi-unit, industrial, or other nonresidential use acreage:	
(i) 1 to 99 acres	20-40 hours
(ii) 100 acres or more, income approach to value	50-60 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:	Form	Narrative
(i) separate grazing privileges or permits	20 hrs	25 hrs
(ii) irrigated cropland, pasture 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 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	0.5 hours
(ii) interior and exterior inspection,	

highest and best use analysis, data collection only	1 hour
(iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3.75 hours
(b) one-unit dwelling, above-grade living area area 4,000 square feet or more:	
(i) exterior inspection, highest and best use analysis, data collection only	0.75 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	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 electrics 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

October 23, 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.
R277-410. Accreditation of Schools.
R277-410-1. Definitions.

A. "Accreditation" means the formal process for internal and external review and approval under the Standards for the Northwest Accreditation Commission, a division of Advance Education Inc., (AdvancED).

B. "AdvancED" means the provider of accreditation services based on standards, student performance and stakeholder involvement and is a nonprofit resource offering school improvement and accreditation services to education providers.

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

D. "Elementary school" for the purpose of this rule means grades no higher than grade 6.

E. "Junior high school" for purposes of this rule means grades 7 through 9.

F. "Middle school" for the purpose of this rule means grades no lower than grade 5 and no higher than grade 8 in any combination.

G. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member. Northwest is an accreditation division of AdvancED.

H. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 that offers credits toward high school graduation or diplomas or both in whatever kind of school the grade levels exist.

I. "State Council" means the State Accreditation Council, which is composed of 15- 20 public school administrators, school district personnel, private and special purpose school representatives, and USOE personnel. The members are selected to provide statewide representation and volunteer their time and service.

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

R277-410-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-402(1)(c)(i) which directs the Board to adopt rules for school accreditation, 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 accreditation procedures and responsibility for public schools for which accreditation is required or sought voluntarily and for nonpublic schools which voluntarily request AdvancED Northwest accreditation.

R277-410-3. Accreditation of Public Schools.

A. The USOE has responsibility to facilitate accreditation by the Board for Utah public schools. The Board is not responsible for the accreditation of nonpublic schools, including private, parochial, or other independent schools.

B. Utah public secondary schools, as defined in R277-410-1H and consistent with R277-481-3A(2), shall be members of AdvancED Northwest and be accredited by AdvancED Northwest.

C. Utah public elementary and middle schools that desire accreditation shall be members of AdvancED Northwest and meet the requirements of R277-410-5 and R277-410-6. AdvancED Northwest accreditation is optional for Utah elementary and middle schools.

D. All AdvancED Northwest accredited schools shall complete and file reports in accordance with AdvancED Northwest protocols.

E. If a school includes grade levels for which accreditation is both mandatory and optional, the school shall be accredited in its entirety.

R277-410-4. Accreditation Status; Reports.

A. The Board accepts the AdvancED Northwest Standards for Quality Schools as the basis for its accreditation standards for school accreditation.

B. The Board requires Utah public schools seeking accreditation to satisfy additional specific Utah assurances in addition to required AdvancED Northwest standards.

C. A school shall complete reports as required by AdvancED Northwest and submit the report to the appropriate recipients.

D. A school shall have a complete school evaluation and site visit at least once every five years to maintain its accreditation.

E. The USOE may require on-site visits as often as necessary when it receives notice of accreditation problems, as determined by the USOE, AdvancED Northwest, or its State Council.

F. The school's accreditation status is recommended by the State Council following a review of the report of the school's External Review. Final approval of the status is determined by the AdvancED Commission and approved by the Board.

R277-410-5. Accreditation Procedures.

A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the USOE, and AdvancED Northwest share responsibilities. A school's internal review, development, and implementation of a school improvement plan are crucial steps toward accreditation.

B. A school seeking AdvancED Northwest accreditation for the first time shall submit a membership application to AdvancED. The accepted application shall be forwarded to the AdvancED State Director.

(1) Following a visit by at least two qualified educators verifying a school's compliance with accreditation standards and approval by the AdvancED Commission, the school shall then receive accreditation.

C. AdvancED Northwest accredited schools shall be subject to:

(1) compliance with AdvancED Northwest membership requirements;

(2) satisfactory review by the State Council, AdvancED Northwest Commission and Board approval;

(3) a site visit at least every five years by an external review team to review the internal review materials, visit classes, and talk with staff and students as follows:

(a) The external review team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent or local charter board chair, and other appropriate parties.

(b) AdvancED staff shall review the external review team report, consult with the State Council and the AdvancED Commission shall grant accreditation status if appropriate.

D. Following review and acceptance, accreditation external review team reports are public information and are available upon request.

R277-410-6. Elementary School Accreditation.

A. Elementary schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah elementary schools is optional; interested elementary schools may apply to AdvancED Northwest for accreditation.

C. Accreditation shall take place under the direction of AdvancED Northwest.

R277-410-7. Junior High and Middle School Accreditation.

A. Junior high and middle schools desiring accreditation

shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah middle schools is optional; interested middle schools may apply to AdvancED Northwest for accreditation.

C. Public junior high and middle schools that include grade 9 shall be members of AdvancED Northwest and be visited and assigned status by Advanced Northwest.

D. The AdvancED Northwest accreditation standards provided in this rule are applicable to junior high and middle schools in their entirety if the schools include grade 9 consistent with R277-410-6C.

R277-410-8. Board Accreditation Standards.

A. Board accreditation standards include AdvancED Standards for Quality Schools and Utah-specific requirements. Each standard requires the school to respond to a series of indicator statements and provide evidence of compliance as directed.

B. AdvancED Standards for Quality Schools.

(1) Purpose and Direction

(2) Governance and Leadership

(3) Teaching and Assessing for Learning

(4) Resources and Support Systems

(5) Using Results for Continuous Improvement

C. Utah-specific assurances include essential information sought from schools to demonstrate alignment with Utah law and Board rules. Utah-specific assurances are available from the USOE Teaching and Learning Section.

R277-410-9. Transfer or Acceptance of Credit.

A. Utah public schools shall accept transfer credits from accredited secondary schools consistent with R277-705-3.

B. Utah public schools may accept transfer credits from other credit sources consistent with R277-705-3.

KEY: accreditation, public schools, nonpublic schools
October 8, 2013 **Art X Sec 3**
Notice of Continuation August 1, 2012 **53A-1-402(1)(c)**
53A-1-401(3)

R277. Education, Administration.
R277-412. State Capitol Visit Program.
R277-412-1. Definitions.

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

B. "State Capitol visit" means public school student field trips to the State Capitol.

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

R277-412-2. Authority and Purpose.

A. The 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-17a-170(3) which requires the Board to make rules establishing procedures for applying for and awarding grants and specifying how grant money shall be allocated among school districts and charter schools, and Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide criteria, procedures and timelines for the Board to select schools to participate in State Capitol visits.

R277-412-3. School Application Process.

A. All public schools shall be eligible for the program.

B. An applicant school shall provide a completed application for the school's State Capitol field trip that shall:

(1) indicate how the field trip will meet self-identified academic objectives;

(2) estimate the number of students served by the program; and

(3) provide additional information requested by the USOE on the application.

R277-412-4. School Selection Criteria and Timeline.

A. The USOE shall provide an application for the Capitol Visit funding by June 15, 2013.

B. The USOE shall screen all applications for compliance with all application requirements.

C. The USOE shall seek the participation and advice of the Utah Commission on Civic and Character Education in selecting the applications for consideration for funding to ensure an equitable distribution of funding to as many school districts and public charter schools within the state as possible. The Board shall make final school selections.

D. The Board shall select and notify successful applicants no later than August 15, 2013.

KEY: public schools, State Capitol visits
October 8, 2013 **Art X, Sec 3**
53A-17a-170(3)
53A-1-401(3)

R277. Education, Administration.
R277-425. Budgeting, Accounting, and Auditing for Utah Local Education Agencies (LEAs).
R277-425-1. Definitions.

A. "Accrual accounting" means a basis of accounting that measures the performance of an entity by recognizing economic events regardless of when cash transactions occur. Economic events are recognized by matching revenues to expenses at the time in which the transaction occurs rather than when payment is made.

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

C. "FASB" means the Financial Accounting Standards Board that has legal authority to establish financial accounting and reporting standards (GAAP) for publicly held companies and nonprofit organizations.

D. "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.

E. "GAAS" means auditing standards established by the American Institute of Certified Public Accountants, generally referred to as Generally Accepted Auditing Standards.

F. "GASB" means the Governmental Accounting Standards Board that is the source of generally accepted accounting principles (GAAP) used by state and local governments in the United States.

G. "LEA" means local education agency which includes school districts and charter schools.

H. "Modified accrual accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measureable and, recognizes expenditures when liabilities are incurred.

I. "Non-operating LEA" means an LEA that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as an LEA in a start-up year(s).

J. "Operating LEA" means an LEA that has received state minimum school program funds or federal funds and is providing educational services during a fiscal year.

K. "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. LEA Audit Requirements.

A. An operating LEA shall cause an audit to be made of its accounts by a competent, independent certified public accountant. Utah Code Section 51-2a-201-1 requires audits for an entity whose revenues or expenditures of all funds is $500,000 or more. Section 51-2a-201-2 require an entity whose revenues or expenditures of all funds less than $500,000 cause a financial report to be made in a manner prescribed by the state auditor. The state auditor provides for external parties to require audits of their entities.

B. A non-operating LEA shall cause a financial report to be made consistent with Utah Code section 51-2a-201.

R277-425-4. Reporting Standards.

A. Each LEA's financial reporting shall be in accordance with GAAP which include GAAS.

B. LEA's financial reporting shall be provided in a manner consistent with the basis of accounting as determined by the entity's GAAP, consistent with either GASB or FASB. If FASB standards are followed, the LEA shall provide reconciliation between the accrual basis of accounting and modified accrual basis of accounting.

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, 2013 and reviewed annually. The USOE School Finance website contains applicable Utah statutes, applicable Board rules, and uniform rules for:

(1) budgeting;

(2) financial accounting which includes a chart of accounts for LEAs required under Section 53A-1-301(3)(d)(v);

(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

October 8, 2013	**53A-1-402(1)(e)**
Notice of Continuation August 2, 2013	**53A-1-404**
	53A-1-405
	53A-1-401(3)
	Art X Sec 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. "ESEA" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

F. "Expansion" means a proposed increase of students or adding grade level(s) in an operating charter school at a single location.

G. "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.

H. "Mentoring program," for purposes of this rule, means the State Charter School Board mentoring program.

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.

M. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education local education agencies (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.

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 provide directions to charter schools for federal funds and startup and implementation funding. The rule also provides criteria for a charter school mentoring program and additional charter school-specific directives.

R277-470-3. Maximum Authorized Charter School Students.

A. Local school boards and institutions of higher education may approve charter schools by notifying the Board by October 1 of the state fiscal year one year 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 and approved by the Board.

R277-470-4. Charter Schools and ESEA Funds.

A. Charter schools that desire to receive ESEA funds shall comply with the requirements of R277-470-4.

B. To obtain its allocation of ESEA 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 UTREx submission.

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. New schools and satellite schools are eligible; school expansions are not eligible.

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 recipients 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 all reasonable expenditures, including:

(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;

(4) substitute per diem (paid to mentor's employer) if the mentor has to miss work and a substitute is necessary;

(5) payment for mentors and teacher stipend, or both, consistent with USOE policy; and

(6) supplies and materials used in the training, consistent with USOE policy.

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.

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 consistent with R277-477-3A.

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.

B. The Board shall have authority for final approval of all charter schools that receive minimum school program funds. All charter schools shall be subject to accountability standards established by the Board and to monitoring and auditing by the Board.

KEY: education, charter schools

October 8, 2013	**Art X, Sec 3**
Notice of Continuation August 2, 2013	**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. 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. "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.

H. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

I. "Superintendent" means the State Superintendent of Public Instruction as designated under Section 53A-1-301.

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

K. "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 chartering entity 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 charter schools for which it is the chartering entity, including requiring all charter schools to:

(1) comply with their charter agreements containing clear and meaningful expectations for measuring charter school quality.

(2) annually review charter agreements, as maintained by the USOE;

(3) regularly review other matters specific to effective charter school operations, including a comprehensive review of governing board performance at least once every five years; and

(4) audit and investigate claims of fraud or misuse of public assets or funds.

B. All charter schools authorized by the State Charter School Board 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 performance standards 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 performance standards has not been met by an assigned date following designation of warning status, 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 chartering entities; 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;

(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; and

(4) audit and investigate claims of fraud or misuse of public assets or funds.

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 appropriate 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. Remedying Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school deficiencies, the chartering entity shall immediately direct an independent review or audit through the charter school governing board.

B. The chartering entity or the Board through the chartering entity 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 chartering entity 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 chartering entity shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The chartering entity may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the chartering entity's recommendation(s) for remedying a charter school's deficiency(ies) within 60 days of receipt of information from the chartering entity.

G. In addition to remedies provided for in Section 53A-1a-509, the chartering entity 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 for approval 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 chartering entity administrative decisions or recommendations to the Board.

B. The following chartering entity 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 chartering entity 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 its 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 chartering entity 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 chartering entity 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 chartering entity shall be in place pending the conclusion of the appeals process, unless the Superintendent in his sole discretion, determines that the chartering entity'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

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Notice of Continuation August 2, 2013	**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 increase of students or adding grade level(s) in an operating charter school at a single location.

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. 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.

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. State Charter School Board 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 may 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 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 chartering entity 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 and Facilities.

A. Chartering entities shall accept a proposed starting date from a charter school applicant, or the chartering entity shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.

B. Only charter schools approved as new charter schools by October 1, one fiscal year prior to the state fiscal year they intend to serve students shall be eligible for state funds.

C. A State Charter School Board authorized school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent with R277-471, no later than January 1 of the year the school is scheduled to open.

D. A State Charter School Board authorized school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to R277-471, shall enter into a written agreement no later than May 1 of the calendar year the school is scheduled to open.

E. 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).

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 chartering entity's 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 all state required assessments;

(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 chartering entity consistent with the chartering entity's requirements.

B. If the chartering entity approves a charter school expansion:

(1) requiring a construction project number under R277-471, the expansion shall be approved before October 1 of the state fiscal year prior to the school's intended expansion date.

(2) that does not require a construction project number under R277-471, the charter school shall be approved before May 1 of the state fiscal year prior to the school's intended expansion.

C. 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.

D. Requests under R277-482-7C 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.

E. 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 chartering entity for a satellite school 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 chartering entity 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. Only a satellite school approved by October 1 of the state fiscal year prior to the year the school intends to serve students shall be eligible for state funds.

C. The approval of the satellite school by the chartering entity 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

October 8, 2013	**Art X Sec 3**
Notice of Continuation August 2, 2013	**53A-1a-513**
	53A-1-401(3)
	53A-1a-502.5

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.

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 annually.

(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 annually. 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 annually.

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 annually.

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 annually.

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

October 8, 2013	**Art X Sec 3**
Notice of Continuation August 2, 2013	**53A-1-401(3)**
	53A-17a-159

R277. Education, Administration.
R277-494. Charter School and Online Student Participation in Extracurricular or Co-curricular School Activities.
R277-494-1. Definitions.

A. "Activity fees" means fees that are approved by a local board and charged to all students to participate in any or all activities sponsored by or through the public school. Fees vary among districts and schools and entitle a public school student to participate in regular school activities, to try out for extracurricular or co-curricular school activities, to receive transportation to activities, and to attend regularly scheduled public school activities.

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

C. "Charter school" means a school acknowledged as a charter school by a local board of education under Section 53A-1a-515 and R277-470 or by the Board under Section 53A-1a-505.

D. "Co-curricular activity" means a school district or school activity, course or experience that includes a required regular school day component and an after school component; special programs or activities such as programs for gifted and talented students, summer programs and science and history fairs are co-curricular activities.

E. "Extracurricular activity" means an athletic program or activity sponsored by the public school and offered, competitively or otherwise, to public school students outside of the regular school day or program.

F. "Online school" means a school:

(1) that provides the same number of classes consistent with the requirement of similar public schools;

(2) that delivers course work via the internet;

(3) that has designated a readily accessible contact person; and

(4) that provides the range of services to public education students required by state and federal law.

G. "Pay to play fees" means the fees charged to a student to participate in a specific school-sponsored extracurricular or co-curricular activity. All fees shall be approved annually by the local board of education.

H. "Student's boundary school" means the school the student is designated to attend according to where the student's legal guardian lives or the school where the student is enrolled under Section 53A-2-206.5 et seq.

I. "Student's school of enrollment" means the public school in which the student is enrolled consistent with Section 53A-11-101 et seq.

J. "Student fee waivers" means all expenses for an activity that are waived for student participation in the activity consistent with Section 53A-12-103 et seq. and R277-407.

K. "School participation fee" means the fee paid by the charter/online school to the boundary school consistent with R277-494-4 for student participation in extracurricular or co-curricular activities.

L. "Student participation fee" means the fee charged to all participating charter/online and traditional school students by the boundary school for designated extracurricular or co-curricular activities consistent with R277-407.

R277-494-2. 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, Section 53A-1a-519(5) that directs the Board to make rules establishing fees for a charter school student's participation in extracurricular or co-curricular activities at school district schools, and Section 53A-2-214(6) which directs the Board to make rules establishing fees for an online student's participation in extracurricular or co-curricular activities at school district schools.

B. The purpose of this rule is to inform school districts, charter and online schools, and parents of school participation fees and state-determined requirements for a charter school or a public online school student to participate in extracurricular athletics and activities at a student's boundary school.

R277-494-3. Requirements for Payment and Participation Integral to the Schedule.

A. A charter or online school shall allow student participation in activities designated under R277-494-1E upon satisfaction of requirements and payments of this rule and satisfaction of school district standards and requirements.

B. A school participation fee of $75.00 per student shall be paid by the student's school of enrollment to the boundary school at which the student desires to participate. Upon annual payment of the school participation fee, the student may participate in all extracurricular school activities as defined in R277-494-1E during the school year for which the student is qualified and eligible.

C. The participation fee paid by the charter or online school is in addition to individual student participation fees for specific extracurricular activities and the activity fees charged to all students in the secondary school to supplement school activities as assessed by the school consistent with this rule. Student participation fees or required activity fees shall be paid to the boundary school by the participating student.

D. All fees, including school participation fees, student participation fees and activity fees shall be paid prior to student participation.

E. If a participating charter or online school student qualifies for fee waivers, all waived student participation fees shall be paid to the boundary school by the student's school of enrollment prior to student participation.

R277-494-4. Additional Provisions.

A. Charter, online and traditional schools may negotiate to allow student participation in co-curricular activities such as debate, drama, choral programs, specialized courses or programs offered during the regular school day, and school district-sponsored enrichment programs or activities. Participating charter/online students shall be required to meet all attendance and course requirements of all boundary public school students.

B. A charter and online student participating under this rule shall meet all eligibility requirements and timelines of the boundary school.

KEY: extracurricular, co-curricular, activities, student participation

October 22, 2009	**Art X Sec 3**
Notice of Continuation October 4, 2013	**53A-1-401(3)**
	53A-1a-519(5)
	53A-2-214(6)

R277. Education, Administration.
R277-609. Standards for LEA Discipline Plans.
R277-609-1. Definitions.

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

B. "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.

C. "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).

D. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

E. "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.

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 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.

G. "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.

H. "School" means any public elementary or secondary school or charter school.

I. "School board" means:

(1) a local school board; or

(2) a local charter board.

J. "School employee" means:

(1) school teachers;

(2) school staff;

(3) school administrators; and

(4) all others employed, directly or indirectly, by the LEA.

K. "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 outline requirements for school discipline plans and policies which LEAs shall meet.

R277-609-3. LEA Responsibility to Develop Plans.

A. Each LEA or school shall develop and implement a board approved comprehensive LEA 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; and

(8) policies and procedures related to bullying, cyber-bullying, harassment, hazing, and retaliation consistent with requirements of R277-613.

B. The plan shall also provide direction for dealing with bullying and 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 and bullying 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) require that policies be clearly written and consistently enforced; and

(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 of this rule may result in employee discipline or action.

C. Plans required under R277-609-3 shall include gang prevention and intervention policies.

(1) The required plans shall account for an individual LEA's or school'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. LEAs shall implement strategies and policies consistent with their plans.

B. LEAs 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 an LEA receives information from the courts that disruptive student behavior will result in court action, the LEA 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 LEAs 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, LEA 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 LEA boards model policies to address disruptive student behavior and appropriate consequences.

KEY: disciplinary actions, disruptive students

October 8, 2013	**Art X Sec 3**
Notice of Continuation August 2, 2013	**53A-1-401(3)**
	53A-1-402(1)
	53A-15-603
	53A-11-901

R277. Education, Administration.
R277-613. LEA Bullying, Cyber-bullying, Hazing and Harassment 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.

(4) Bullying is commonly understood as aggressive behavior that:

(a) is intended to cause distress and harm;

(b) exists in a relationship in which there is an imbalance of power and strength; and

(c) is repeated over time.

C. "Civil rights violations," for purposes of this rule, means bullying, cyber-bullying, hazing or harassing that is targeted at a federally protected class.

D. "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.

E. "Federally protected class" means any group protected from discrimination under the following federal laws:

(1) Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin;

(2) Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex;

(3) Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability; and

(4) Other areas included under these acts prohibit discrimination on the basis of religion, gender identity, and sexual orientation.

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;

(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 R277-613-1G constitutes hazing, regardless of whether the person against whom the conduct is committed, directed, consented to, or acquiesced in, the conduct.

H. "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.

I. "Parent," for purposes of this rule, means a student's guardian consistent with Section 53A-11a-203(1).

J. "Participant" means any student, employee or volunteer coach participating in a public school sponsored athletic program, both curricular and extracurricular, or extracurricular club or activity.

K. "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 an LEA board that define bullying, cyber-bullying, hazing and harassment, prohibit bullying, cyber-bullying, hazing and harassment, require regular annual discussion and training designed to prevent bullying, cyber-bullying, hazing and harassment among school employees and students and provide for enforcement through employment action or student discipline.

L. "Retaliate or retaliation" means an act or communication intended:

(1) as retribution against a person for reporting bullying, cyber-bullying, hazing and harassment; or

(2) to improperly influence the investigation of, or the response to, a report of bullying, cyber-bullying, hazing and harassment.

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 LEA compliance with Section 53A-11a-301.

B. The purpose of the rule is to require LEAs to implement bullying, cyber-bullying, hazing and harassment policies district and school wide; to provide for regular and meaningful training of school employees and students; to provide for enforcement of the policies in schools, at the state level and in public school athletic programs; to require LEAs to notify parents of specific bullying, cyber-bullying, hazing, harassment and suicide threat incidents; and to require LEAs to maintain documentation as required by law.

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 LEAs on bullying, cyber-bullying, hazing and harassment.

B. The Board may interrupt disbursements of funds consistent with Section 53A-1-401(3) for failure of an LEA to comply with this rule.

R277-613-4. LEA Responsibility to Create Bullying Policies.

A. Each LEA shall implement an updated policy prohibiting bullying, cyber-bullying, hazing, harassment and retaliation, and making a false report, consistent with Section 53A-11a-301.

B. Each LEA shall:

(1) post a copy of its policy on the LEA website; and

(2) provide a copy of the LEA policy or uniform resource locator (URL) to the State Superintendent of Public Instruction at the Utah State Office of Education.

C. The policy shall include parental notification of:

(1) a parent's student's threat to commit suicide; and

(2) an incident of bullying, cyber-bullying, hazing, harassment or retaliation involving the parent's student.

(3) This part of the policy shall also include:

(a) timely parent notification;

(b) designation of the appropriate school employee(s) to provide parent notification;

(c) designation of the format in which notification shall be provided to parents and maintained by the LEA;

(d) directives for secure maintenance of the notification record as required under Section 53A-11a-203(1);

(e) a retention period and destruction process for the notification; and

(f) an LEA definition of parent(s) consistent with Section 53A-11-203 and this rule.

D. The policy shall provide for student assessment of the prevalence of bullying, cyber-bullying, hazing and harassment in LEAs and schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas.

E. The policy shall 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 provide that students, staff, and volunteers receive training on bullying, cyber-bullying, hazing and harassment from individuals qualified to provide such training. The LEA shall determine how often training shall be provided.

(1) The training should be specific to:

(a) 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) relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;

(c) sexual aggression or acts of a sexual nature or with sexual overtones;

(d) 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; and

(e) civil rights violations, appropriate reporting and investigative procedures. This includes bullying, cyber-bullying, hazing and harassment based upon the students' actual or perceived identities and conformance or failure to conform with stereotypes.

(2) Training should also include awareness and intervention skills such as social skills training for students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches.

(3) Training on bullying, cyber-bullying, hazing and harassment required of LEA policies under the rule should complement the suicide prevention program required for students under R277-620 and the suicide prevention training required for licensed educators consistent with Section 53A-1-603(9).

G. Policies shall also complement existing safe and drug free school policies and school discipline plans. Consistent with R277-609, the discipline plan shall provide direction for dealing with bullying, cyber-bullying, hazing, harassment and 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 and bullying, cyber-bullying, hazing and harassment 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.

R277-613-5. Training by LEAs Specific to Participants in Public School Athletic Programs and School Clubs.

A. Prior to any student, employee or volunteer coach participating in a public school sponsored athletic program, both curricular and extracurricular, or extracurricular club or activity, the student, employee or coach shall participate in bullying, cyber-bullying, hazing and harassment prevention training. This training shall be offered to new participants on an annual basis and to all participants at least once every three years.

B. LEAs 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 and the rule.

D. Training curriculum outlines, training schedules, and participant lists or signatures shall be maintained by each LEA 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, cyber-bullying, hazing, harassment

October 8, 2013	**Art X Sec 3**
Notice of Continuation August 2, 2013	**53A-1-401(3)**
	53A-11a-301

R277. Education, Administration.
R277-620. Suicide Prevention Programs.
R277-620-1. Definitions.

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

B. "Intervention" means an effort to prevent a student from attempting suicide.

C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

D. "Parent notification" means a notice provided by a public school to a students' parent(s) consistent with Section 53A-11a-203(2) and 53A-11a-301(3)(e).

E. "Postvention" means mental health intervention after a suicide attempt or death to prevent or contain contagion.

F. "Program for secondary grades" means a youth suicide prevention program for students in grades 7 through 12, including grade 6 if middle or junior high school includes grade 6.

G. "State suicide prevention coordinator" means the person designated by the Department of Health - State Division of Substance Abuse and Mental Health in Section 62A-15-1101.

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

I. "USOE suicide prevention coordinator" means person designated by the Board to oversee the youth suicide prevention programs of LEAs and who is responsible to coordinate prevention programs, services, and efforts with the state suicide prevention coordinator.

J. "Youth protection and mental health seminar" means an evening seminar offered by an LEA to parents of students consistent with Section 53A-15-1301.

R277-620-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X Section 3 which vests general control and supervision of public education in the Board, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purposes of this rule are:

(1) to provide for collaboration with the Department of Health and Department of Human Services to establish, oversee, and provide model policies, programs for LEAs and training for parents about youth suicide prevention programs;

(2) to require LEAs to have and update youth protection policies; and

(3) to direct LEAs to send notice to parents and protect the confidentiality of the required parent notification record regarding bullying and suicide incidents.

R277-620-3. Board, USOE and LEA Responsibilities.

A. Board and USOE responsibilities:

(1) The USOE suicide prevention coordinator shall oversee LEA youth suicide prevention programs.

(2) The USOE in collaboration with the Department of Health - State Division of Substance Abuse and Mental Health and the state suicide prevention coordinator shall establish model youth suicide prevention programs for LEAs that include training and resources addressing prevention of youth suicides, youth suicide intervention, and postvention for family, students and faculty.

(3) Based on legislative appropriation, the Board shall distribute funds to implement LEA programs.

(4) The Board shall report jointly with the state suicide prevention coordinator to the Legislature's Education Interim Committee in November 2013 and 2014 on:

(a) the progress of LEA programs; and

(b) the Board's coordination efforts with the Department of Health - State Division of Substance Abuse and Mental Health and the state suicide prevention coordinator.

B. LEA responsibilities:

(1) LEAs shall implement youth suicide prevention programs for students in secondary grades, including grades 7 through 12 and grade 6, if grade 6 is part of a secondary grade model.

(2) The programs shall include components provided in Section 53A-15-1301(2).

(3) LEAs shall update bullying, cyber-bullying, harassment, hazing, and retaliation policy(ies) consistent with Section 53A-11a-301 and R277-613, including the required parent notification outlined in Sections 53A-11a-203(2) and 53A-11a-301(3)(e) and R277-613-4C and D.

(4) LEAs shall provide necessary reporting information consistent with Section 53A-15-1301(3) and (5) for the Board's report on the coordination of suicide prevention programs and seminar program implementation to the Legislature's Education Interim Committee.

KEY: public schools, suicide prevention programs, parent notification, seminars
October 8, 2013 **Art X Sec 3**
53A-1-401(3)

R277. Education, Administration.
R277-750. Education Programs for Students with Disabilities.
R277-750-1. Definitions.

"Board" means the Utah State Board of Education.

R277-750-2. 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) which directs the Board to adopt rules regarding services for persons with disabilities, Section 53A-15-301 which directs the Board to set standards for state funds appropriated for students with disabilities and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for special education programs.

R277-750-3. Standards and Procedures.

A. As its rules for programs for students with disabilities, the Board adopts and hereby incorporates by reference the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C., 1400.

B. The Board shall act in accordance with:

(1) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794, incorporated by reference in R277-112;

(2) R277-750;

(3) State Board of Education Special Education Rules, August 2013; and

(4) The annual Utah State Federal Application under Part B of the Individuals with Disabilities Education Act as amended in 2004.

C. Students with disabilities shall be entitled to dual enrollment consistent with Section 53A-11-102.5 and R277-438.

KEY: special education

October 8, 2013	**Art X Sec 3**
Notice of Continuation August 14, 2012	**53A-1-402(1)**
	53A-15-301
	53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-351. Graphic Arts.
R307-351-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emissions from graphic arts printing operations.

R307-351-2. Applicability.

R307-351 applies to graphic arts printing operations in Box Elder, Cache, Davis, Salt Lake, Utah and Weber counties as specified below. For purposes of determining whether the emissions applicability threshold or an equivalent threshold is met, the owner or operator shall consider source-wide emissions from all printing operations including related cleaning activities prior to controls.

(1) R307-351-4 applies to all packaging and publication rotogravure; packaging and publication flexographic; and specialty printing operations employing VOC-containing inks, including dilution and cleaning materials, that have potential to emit on a per press basis equal to or greater than 25 tons per year of VOC. Flexible packaging printing is exempt from R307-351-4.

(2) R307-351-5 applies to all flexible packaging printing operations with potential to emit on a per press basis, from the dryer, prior to controls, equal to or greater than 25 tons per year of VOC from inks, coatings and adhesives combined.

(3) R307-351-6(1) applies to individual heatset web offset lithographic printing presses and individual heatset web letterpress printing presses with potential to emit from the dryer, on a per press basis, prior to controls, equal to or greater than 25 tons per year of VOC. Heatset presses used for book printing and heatset presses with maximum web width of 22 inches or less are exempt from R307-351-6(1).

(4) R307-351-6(4) applies to offset lithographic printing operations that emit at least 2.7 tons per year actual emissions of VOC, or an equivalent level, before consideration of controls. Any press with total fountain solution reservoir of less than one gallon and sheet-fed presses with maximum sheet size of 11 inches by 17 inches or smaller are exempt from R307-351-6(4).

(5) R307-351-6(5) applies to offset lithographic printing and letterpress printing operations that emit at least 2.7 tons per year actual emissions of VOC, or an equivalent level, before consideration of controls. Cleaners used on electronic components of a press, pre-press cleaning operations (e.g., platemaking), post-press cleaning operations (e.g., binding), cleaning supplies (e.g., detergents) used to clean the floor (other than dried ink) in the area around a press, or cleaning performed in parts washers or cold cleaners are exempt from R307-351-6(5).

(6) R307-351-7 applies to all graphic arts printing operations that emit at least 2.7 tons per year actual emissions of VOC, or an equivalent level, before consideration of controls.

R307-351-3. Definitions.

The following additional definitions apply to R307-351:

"Alcohol" means any of the following compounds, when used as a fountain solution additive for offset lithographic printing: ethanol, n-propanol, and isopropanol.

"Alcohol Substitute" means a nonalcohol additive that contains VOCs and is used in the fountain solution.

"Automatic Blanket Wash System" means equipment used to clean lithographic blankets which can include, but is not limited to those utilizing a cloth and expandable bladder, brush, spray, or impregnated cloth system.

"Cleaning Solution" means a liquid solvent or solution used to clean the operating surfaces of a printing press and its parts. Cleaning solutions include, but are not limited to blanket wash, roller wash, metering roller cleaner, plate cleaner, impression cylinder washes, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink or coating from areas around the press.

"Blanket" means a synthetic rubber material that is wrapped around a cylinder used in offset lithography to transfer or "offset" an image from an image carrier.

"Capture efficiency" means the fraction of all VOC emissions generated by a process that are delivered to a control device, expressed as a percentage.

"Capture system" means the equipment (including hoods, ducts, fans, etc.) used to collect, capture, or transport a pollutant to a control device.

"Coating" means material applied onto or impregnated into a substrate. Such materials include, but are not limited to, solvent-borne and waterborne coatings.

"Composite partial vapor pressure" means the sum of the partial pressure of the compounds defined as VOCs.

"Control device" means a device such as a carbon adsorber or oxidizer which reduces the VOC in an exhaust gas by recovery or by destruction.

"Control device efficiency" means the ratio of VOC emissions recovered or destroyed by a control device to the total VOC emissions that are introduced into the control device, expressed as a percentage.

"Flexible packaging" means any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, liners and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

"Flexographic press" means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator), a series of individual work stations, one or more of which is a flexographic print station, any dryers (including interstage dryers and overhead tunnel dryers) associated with the work stations, and a rewind, stack, or collection section. The work stations may be oriented vertically, horizontally, or around the circumference of a single large impression cylinder. Inboard and outboard work stations, including those employing any other technology, such as rotogravure, are included if they are capable of printing or coating on the same substrate. A publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

"Flexographic printing" means the application of words, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Fountain solution" means a mixture of water and other volatile and non-volatile chemicals and additives that wets the nonimage area of a lithographic printing plate so that the ink is maintained within the image areas.

"Heatset" means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

"Letterpress printing" means a method where the image area is raised relative to the non-image area and the ink is transferred to the substrate directly from the image surface.

"Narrow-web flexographic press" means a flexographic press that is not capable of printing substrates greater than 18 inches in width and that does not also meet the definition of rotogravure press (i.e., it has no rotogravure print stations).

"Non-heatset", also called coldset, means an offset lithographic printing or letterpress printing operation in which the ink dries by oxidation and/or absorption into the substrate without use of heat from dryers.

"Offset lithographic printing" means a plane-o-graphic method in which the image and non-image areas are on the same plane and the ink is offset from a plate to a rubber blanket, and

then from the blanket to the substrate.

"Overall control efficiency" means the total efficiency of a control system, determined either by:

(1) The product of the capture efficiency and the control device efficiency; or

(2) A liquid-liquid material balance.

"Packaging printing" means rotogravure or flexographic printing, not otherwise defined as publication printing, upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels. This includes, but is not limited to, folding cartons, flexible packaging, labels and wrappers.

"Printing operation" means the application of words, designs, or pictures on a substrate. All units in a machine which have both coating and printing units shall be considered as performing a printing operation.

"Printing Press" means a printing production assembly composed of one or more units used to produce a printed substrate, including but not limited to, any associated coating, spray powder application, heatset web dryer, ultraviolet or electron beam curing units, or infrared heating units.

"Publication rotogravure printing" means rotogravure printing upon paper that is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

"Publication rotogravure press" means a rotogravure press used for publication rotogravure printing. A publication rotogravure press may include one or more flexographic imprinters. A publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

"Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

"Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

"Rotogravure coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

"Rotogravure press" means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator), a series of individual work stations, one or more of which is a rotogravure print station, any dryers associated with the work stations, and a rewind, stack, or collection section. Inboard and outboard work stations, including those employing any other technology, such as flexography, are included if they are capable of printing or coating on the same substrate.

"Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique that involves a recessed image area in the form of cells.

"Specialty printing operations" means all gravure and flexographic operations that print a design or image, excluding publication and packaging printing. Specialty printing operations include, among other things, printing on paper cups and plates, patterned gift wrap, wallpaper, and floor coverings.

"Web" means a continuous roll of substrate.

"Wide-web flexographic press" means a flexographic press capable of printing substrates greater than 18 inches in width.

R307-351-4. Standards for Rotogravure, Flexographic, and Specialty Printing Operations.

(1) No owner or operator of a packaging and publication rotogravure; packaging and publication flexographic, and specialty printing operations employing VOC-containing ink may operate, cause, or allow or permit the operation of a facility unless:

(a) The volatile fraction of ink, as it is applied to the substrate, contains 25.0% by volume or less of VOC and 75.0% by volume or more of water; or

(b) The ink as it is applied to the substrate, less water, contains 60.0% by volume or more nonvolatile material; or

(c) The owner or operator installs and operates either a carbon adsorption system as described in R307-351-4(1)(a)(i) or an incineration system as described in R307-351-4(1)(a)(ii).

(i) A carbon adsorption system shall reduce the volatile organic emissions from the capture system by a minimum of 90.0% by weight.

(ii) An incineration system shall oxidize, from the capture system, a minimum of 90.0% of the non-methane VOCs measured as total combustible carbon to carbon dioxide and water.

(iii) A capture system as described in R307-351-4(1)(c)(iv) shall be used in conjunction with a carbon adsorption system and an incineration system.

(iv) The design and operation of a capture system must be consistent with good engineering practices and shall be required to provide for an overall reduction in VOC emissions of at least:

(A) 75.0% where a publication rotogravure process is employed;

(B) 65.0% where a packaging rotogravure process is employed; or

(C) 60.0% where a flexographic printing process is employed.

(2) The owner or operator of an emission control device shall provide documentation that the system will attain the requirements of R307-351-4.

(3) The Emission control system shall be operated and maintained in accordance with the manufacturer recommendations.

(4) The owner or operator of an emission control device shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-351-5. Standards for Flexible Packaging Printing Operations.

(1) Presses used for flexible packaging printing shall comply with an 80% overall emission control efficiency.

(a) The owner or operator of an emission control device shall provide documentation that the emissions control system will attain the requirements of R307-351-5.

(b) The Emission control system shall be operated and maintained in accordance with the manufacturer recommendations.

(2) The owner or operator of an emission control device shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

(3) As an alternative to the overall control efficiency, the following two equivalent VOC content limits may be met by use of low VOC content materials or combinations of materials and controls as follows:

(a) 0.8 kg VOC/kg solids applied; or

(b) 0.16 kg VOC/kg materials applied.

(c) The VOC content limits can be met by averaging the VOC content of materials used on a single press, i.e., within a line. The use of averaging to meet the VOC content limits is not allowed for cross-line, i.e., across multiple lines.

R307-351-6. Standards for Offset Lithographic Printing and Letterpress Printing Operations.

(1) Requirements for heatset web offset lithographic and

heatset letterpress inks and dryers.

(a) Individual heatset web offset lithographic printing presses and individual heatset web letterpress printing presses shall comply with 90% control efficiency for the control device on heatset dryers.

(b) The owner or operator of an emission control device shall provide documentation that the emissions control system will attain the requirements of R307-351-6.

(c) The Emission control system shall be operated and maintained in accordance with the manufacturer recommendations.

(2) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

(3) As an alternative to the control efficiency, the control device outlet concentration may be reduced to 20 ppmv as hexane on a dry basis to accommodate situations where the inlet VOC concentration is low or there is no identifiable measurable inlet.

(4) Requirements for fountain solution.

(a) For heatset web offset lithographic printing, the level of control for VOC emissions from on-press (as-applied) fountain solution shall meet one of the following:

(i) 1.6% alcohol or less (by weight) in the fountain;

(ii) 3.0% alcohol or less (by weight) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or

(iii) 5.0% alcohol substitute or less (by weight) and no alcohol in the fountain solution.

(b) For sheet-fed offset lithographic printing, the level of control for VOC emissions from on-press (as-applied) fountain solution shall meet one of the following:

(i) 5.0% alcohol or less (by weight) in the fountain;

(ii) 8.5% alcohol or less (by weight) in the fountain solution provided the fountain solution is refrigerated to below 60 degrees Fahrenheit; or

(iii) 5.0% alcohol substitute or less (by weight) and no alcohol in the fountain solution.

(c) For non-heatset web offset lithographic printing, the level of control for VOC emissions shall be 5.0% alcohol substitute or less (by weight) on-press (as-applied) and no alcohol in the fountain solution.

(5) Requirements for cleaning materials.

(a) For blanket washing, roller washing, plate cleaners, metering roller cleaners, impression cylinder cleaners, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink from areas around a press, only cleaning materials with a VOC composite vapor pressure of less than ten mm Hg at 68 degrees Fahrenheit or cleaning materials containing less than 70 weight percent VOC shall be used.

(b) Up to 110 gallons per year of cleaning materials which meet neither the VOC composite vapor pressure requirement nor the VOC content requirement may be used.

R307-351-7. Work Practices and Recordkeeping.

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions from fugitive type sources. Control techniques and work practices include:

(a) Tight fitting covers for open tanks; and

(b) Keeping cleaning materials, used shop towels, and solvent wiping cloths in closed containers.

(2) Record keeping and reporting.

(a) The owner or operator of any source subject to R307-351 shall maintain:

(i) Records of the annual usage of all materials that may be a source of VOC emissions including, but not limited to, inks, coatings, adhesives, fountain solution, and cleaning materials.

(ii) All sources subject to R307-351 shall maintain records demonstrating compliance with all provisions of R307-351. These records shall be available to the director upon request.

R307-351-8. Compliance Schedule.

(1) All sources within Salt Lake and Davis counties shall be in compliance with this rule by the effective date of this rule.

(2) All sources within Box Elder, Cache, Utah and Weber counties shall be in compliance with this rule by January 1, 2014.

KEY: air pollution, graphic arts, VOC, printing operations
February 1, 2013 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-361. Architectural Coatings.
R307-361-1. Purpose.

(1) The purpose of R307-361 is to limit volatile organic compounds (VOC) emissions from architectural coatings.

(2) This rule specifies architectural coatings storage, cleanup, and labeling requirements.

R307-361-2. Applicability.

R307-361 applies to any person who supplies, sells, offers for sale, applies, or solicits the application of any architectural coating, or who manufactures, blends or repackages any architectural coating for use within Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber counties.

R307-361-3. Definitions.

The following additional definitions apply only to R307-361.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Aerosol coating product" means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application or for use in specialized equipment for ground traffic/marking applications.

"Aluminum roof coating" means a coating labeled and formulated exclusively for application to roofs and containing at least 84 grams of elemental aluminum pigment per liter of coating (at least 0.7 pounds per gallon).

"Appurtenance" means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including, but not limited to, bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools; lampposts; partitions; pipes and piping systems; rain gutters and downspouts; stairways, fixed ladders, catwalks, and fire escapes; and window screens.

"Architectural coating" means a coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs.

(1) Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purposes of this rule.

"Basement specialty coating" means a clear or opaque coating that is labeled and formulated for application to concrete and masonary surfaces to provide a hydrostatic seal for basements and other below-grade surfaces, meeting the following criteria:

(1) Coating must be capable of withstanding at least 10 psi of hydrostatic pressure, as determined in accordance with ASTM D7088-04 and;

(2) Coating must be resistant to mold and mildew growth and must achieve a microbial growth rating of 8 or more, as determined in accordance with ASTM D3273-00 and ASTM D3274-95.

"Bitumens" means black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

"Bituminous roof coating" means a coating that incorporates bitumens and that is labeled and formulated exclusively for roofing for the primary purpose of preventing water penetration.

"Bituminous roof primer" means a primer that incorporates bitumens and that is labeled and formulated exclusively for roofing and intended for the purpose of preparing a weathered or aged surface or improving adhesion of subsequent surface components.

"Bond breaker" means a coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

"Calcimine recoaters" means a flat solvent borne coating formulated and recommended specifically for coating calcimine-painted ceilings and other calcimine-painted substrates.

"Coating" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes, and such materials include, but are not limited to, paints, varnishes, sealers, and stains.

"Colorant" means a concentrated pigment dispersion in water, solvent, or binder that is added to an architectural coating after packaging in sale units to produce the desired color.

"Concrete curing compound" means a coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water and or harden or dustproof the surface of freshly poured concrete.

"Concrete/masonry sealer" means a clear or opaque coating that is labeled and formulated primarily for application to concrete and masonry surfaces to prevent penetration of water, provide resistance against abrasion, alkalis, acids, mildew, staining, or ultraviolet light, or harden or dustproof the surface of aged or cured concrete.

"Concrete surface retarder" means a mixture of retarding ingredients such as extender pigments, primary pigments, resin, and solvent that interact chemically with the cement to prevent hardening on the surface where the retarder is applied allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.

"Conjugated oil varnish" means a clear or semi-transparent wood coating, labeled as such, excluding lacquers or shellacs, based on a natural occurring conjugated vegetable oil (tung oil) and modified with other natural or synthetic resins; a minimum of 50% of the resin solids consisting of conjugated oil.

"Conversion varnish" means a clear acid coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Driveway sealer" means a coating labeled and formulated for application to worn asphalt driveway surfaces to fill cracks, seal the surface to provide protection, or to restore or preserve the appearance.

"Dry fog coating" means a coating labeled and formulated only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

"Faux finishing coating" means a coating labeled and formulated to meet one or more of the following criteria:

(1) A glaze or textured coating used to create artistic effects, including, but not limited to, dirt, suede, old age, smoke damage, and simulated marble and wood grain;

(2) A decorative coating used to create a metallic, iridescent, or pearlescent appearance and that contains at least 48 grams of pearlescent mica pigment or other iridescent pigment per liter of coating as applied (at least 0.4 pounds per gallon); or

(3) A decorative coating used to create a metallic appearance and that contains less than 48 grams of elemental metallic pigment per liter of coating as applied (less than 0.4 pounds per gallon); or

(4) A decorative coating used to create a metallic

appearance and that contains greater than 48 grams of elemental metallic pigment per liter of coating as applied (greater than 0.4 pounds per gallon) and which requires a clear topcoat to prevent the degradation of the finish under normal use conditions; or

(5) A clear topcoat to seal and protect a faux finishing coating that meets the requirements of (1) through (4) of this definition, and these clear topcoats shall be sold and used solely as part of a faux finishing coating system.

"Fire-resistive coating" means a coating labeled and formulated to protect structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials. The Fire-Resistive coating category includes sprayed fire resistive materials and intumescent fire resistive coatings that are used to bring structural materials into compliance with federal, state, and local building code requirements. The fire-resistant coatings shall be tested in accordance with ASTM E119-08.

"Flat coating" means a coating that is not defined under any other definition in this rule and that registers gloss less than 15 on an 85 degree meter or less than 5 on a 60 degree meter according to ASTM D523-89 (1999).

"Floor coating" means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, garage floors, and other horizontal surfaces that may be subject to foot traffic.

"Form-release compound" means a coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form which may consist of wood, metal, or some material other than concrete.

"Graphic arts coating or sign paint" means a coating labeled and formulated for hand-application by artists using brush, airbrush, or roller techniques to indoor and outdoor signs, excluding structural components, and murals including lettering enamels, poster colors, copy blockers, and bulletin enamels.

"High-temperature coating" means a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Celsius (400 degrees Fahrenheit).

"Impacted immersion coating" means a high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage by floating ice or debris.

"Industrial maintenance coating" means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates, including floors exposed to one or more of the following extreme environmental conditions:

(1) Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation;

(2) Acute or chronic exposure to corrosive, caustic or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;

(3) Frequent exposure to temperatures above 121 degrees Celsius (250 degrees Fahrenheit);

(4) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or

(5) Exterior exposure of metal structures and structural components.

"Low solids coating" means a coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per gallon) of coating material as recommended for application by the manufacturer.

"Magnesite cement coating" means a coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

"Manufacturer's maximum thinning recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

"Mastic texture coating" means a coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, and is applied in a single coat of at least 10 mils (at least 0.010 inch) dry film thickness.

"Medium density fiberboard (MDF)" means a composite wood product, panel, molding, or other building material composed of cellulosic fibers, usually wood, made by dry forming and pressing of a resinated fiber mat.

"Metallic pigmented coating" means a coating that is labeled and formulated to provide a metallic appearance and must contain at least 48 grams of elemental metallic pigment (excluding zinc) per liter of coating as applied (at least 0.4 pounds per gallon), when tested in accordance with SCAQMD Method 318-95, but does not include coatings applied to roofs, or zinc-rich primers.

"Multi-color coating" means a coating that is packaged in a single container and that is labeled and formulated to exhibits more than one color when applied in a single coat.

"Non-flat coating" means a coating that is not defined under any other definition in this rule and that registers a gloss of 15 or greater on an 85-degree meter and five or greater on a 60-degree meter according to ASTM D523-89 (1999).

"Non-flat/high-gloss coating" means a non-flat coating that registers a gloss of 70 or greater on a 60-degree meter according to ASTM D523-89 (1999).

"Nuclear coating" means a protective coating formulated and recommended to seal porous surfaces such as steel or concrete that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term cumulative radiation exposure according to ASTM Method 4082-02, relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed according to ASTM Method D 3912-95 (2010).

"Particleboard" means a composite wood product panel, molding, or other building material composed of cellulosic material, usually wood, in the form of discrete particles, as distinguished from fibers, flakes, or strands, which are pressed together with resin.

"Pearlescent" means exhibiting various colors depending on the angles of illumination and viewing, as observed in mother-of-pearl.

"Plywood" means a panel product consisting of layers of wood veneers or composite core pressed together with resin and includes panel products made by either hot or cold pressing (with resin) veneers to a platform.

"Post-consumer coating" means a finished coatings generated by a business or consumer that have served their intended end uses, and are recovered from or otherwise diverted from the waste stream for the purpose of recycling.

"Pre-treatment wash primer" means a primer that contains a minimum of 0.5% acid, by weight, when tested in accordance with ASTM D1613-06, that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

"Primer, sealer, and undercoater" means a coating labeled and formulated to provide a firm bond between the substrate and the subsequent coatings, prevent subsequent coatings from being absorbed by the substrate, prevent harm to subsequent coatings by materials in the substrate, provide a smooth surface for the subsequent application of coatings, provide a clear finish coat to seal the substrate, or to block materials from penetrating into or leaching out of a substrate.

"Reactive penetrating sealer" means a clear or pigmented coating that is formulated for application to above-grade concrete and masonry substrates to provide protection from water and waterborne contaminants, including, but not limited to, alkalis, acids, and salts.

(1) Reactive penetrating sealers penetrate into concrete and masonry substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate.

(2) Reactive penetrating sealers line the pores of concrete and masonry substrates with a hydrophobic coating but do not form a surface film.

(3) Reactive penetrating sealers shall meet all of the following criteria:

(a) The reactive penetrating sealer must improve water repellency at least 80% after application on a concrete or masonry substrate, and this performance shall be verified on standardized test specimens in accordance with one or more of the following standards: ASTM C67-07, ASTM C97-02, or ASTM C140-06.

(b) The reactive penetrating sealer shall not reduce the water vapor transmission rate by more than 2% after application on a concrete or masonry substrate, and this performance must be verified on standardized test specimens, in accordance with ASTM E96/E96M-05.

(c) Products labeled and formulated for vehicular traffic surface chloride screening applications shall meet the performance criteria listed in the National Cooperative Highway Research Report 244 (1981).

"Reactive penetrating carbonate stone sealer" means a clear or pigmented coating that is labeled and formulated for application to above-grade carbonate stone substrates to provide protection from water and waterborne contaminants, including but not limited to, alkalis acids, and salts and that penetrates into carbonate stone substrates and chemically reacts to form covalent bonds with naturally occurring minerals in the substrate. They must meet all of the following criteria:

(1) Improve water repellency at least 80% after application on a carbonate stone substrate. This performance shall be verified on standardized test specimens, in accordance with one or more of the following standards: ASTM C67-07, ASTM C97-02, or ASTM C140-06; and

(2) Not reduce the water vapor transmission rate by more than 10% after application on a carbonate stone substrate. This performance shall be verified on standardized test specimens in accordance with one or more of the following standards: ASTM E96/E96M-05.

"Recycled coating" means an architectural coating formulated such that it contains a minimum of 50% by volume post-consumer coating, with a maximum of 50% by volume secondary industrial materials or virgin materials.

"Residential" means areas where people reside or lodge, including, but not limited to, single and multiple family dwellings, condominiums, mobile homes, apartment complexes, motels, and hotels.

"Roof coating" means a non-bituminous coating labeled and formulated for application to roofs for the primary purpose of preventing water penetration, reflecting ultraviolet light, or reflecting solar radiation.

"Rust preventative coating" means a coating that is for metal substrates only and is formulated to prevent the corrosion of metal surfaces for direct-to-metal coating or a coating intended for application over rusty, previously coated surfaces but does not include coatings that are required to be applied as a topcoat over a primer or coatings that are intended for use on wood or any other nonmetallic surface.

"Secondary industrial materials" means products or by-products of the paint manufacturing process that are of known composition and have economic value but can no longer be used for their intended purpose.

"Semitransparent coating" means a coating that contains binders and colored pigments and is formulated to change the color of the surface but not conceal the grain pattern or texture.

"Shellac" means a clear or opaque coating formulated solely with the resinous secretions of the lac beetle (Laciffer lacca) and formulated to dry by evaporation without a chemical reaction.

"Shop application" means an application of a coating to a product or a component of a product in or on the premises of a factory or a shop as part of a manufacturing, production, or repairing process (e.g., original equipment manufacturing coatings).

"Solicit" means to require for use or to specify by written or oral contract.

"Specialty primer, sealer, and undercoater" means a coating that is formulated for application to a substrate to block water-soluble stains resulting from fire damage, smoke damage, or water damage.

"Stain" means a semi-transparent or opaque coating labeled and formulated to change the color of a surface but not conceal the grain pattern or texture.

"Stone consolidant" means a coating that is labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms.

(1) Stone consolidants must penetrate into stone substrates to create bonds between particles and consolidate deteriorated material.

(2) Stone consolidants must be specified and used in accordance with ASTM E2167-01.

"Swimming pool coating" means a coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

"Thermoplastic rubber coating and mastic" means a coating or mastic formulated and recommended for application to roofing or other structural surfaces that incorporates no less than 40% by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients, including, but not limited to, fillers, pigments, and modifying resins.

"Tint base" means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

"Traffic marking coating" means a coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces, including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.

"Tub and tile refinish coating" means a clear or opaque coating that is labeled and formulated exclusively for refinishing the surface of a bathtub, shower, sink, or countertop and that meets the following criteria:

(1) Has a scratch hardness of 3H or harder and a gouge hardness of 4H or harder, determined on bonderite 1000, in accordance with ASTM D3363-05;

(2) Has a weight loss of 20 milligrams or less after 1,000 cycles, determined with CS-17 wheels on bonderite 1000, in accordance with ASTM D4060-07;

(3) Withstands 1,000 hours or more of exposure with few or no #8 blisters, determined on unscribed bonderite in accordance with ASTM D4585-99, and ASTM D714-02e1; and

(4) Has an adhesion rating of 4B or better after 24 hours of recovery, determined on unscribed bonderite in accordance with ASTM D4585-99 and ASTM D3359-02.

"Veneer" means thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

"Virgin Materials" means materials that contain no post-consumer coatings or secondary industrial materials.

"VOC actual" means the weight of VOC per volume of coating and applies to coatings in the low solids coatings category and it is calculated with the following equation:

VOC Actual = (Ws - Ww - Wec)/(Vm)

Where, VOC actual = the grams of VOC per liter of coating (also known as "Material VOC");

Ws = weight of volatiles, in grams;

Ww = weight of water, in grams;
Wec = weight of exempt compounds, in grams; and
Vm = volume of coating, in liters

"VOC content" means the weight of VOC per volume of coating and is VOC regulatory for all coatings except those in the low solids category.

(1) For coatings in the low solids category, the VOC Content is VOC actual.

(2) If the coating is a multi-component product, the VOC content is VOC regulatory as mixed or catalyzed.

(3) If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content must include the VOCs emitted during curing.

(4) VOC content must include maximum amount of thinning solvent recommended by the manufacturer.

"VOC regulatory" means the weight of VOC per volume of coating, less the volume of water and exempt compounds. It is calculated with the following equation:

VOC Regulatory = (Ws - Ww - Wec)/(Vm - Vw - Vec)

Where, VOC regulatory = grams of VOC per liter of coating, less water and exempt compounds (also known as "Coating VOC");
Ws = weight of volatiles, in grams;
Ww = weight of water, in grams;
Wec = weight of exempt compounds, in grams;
Vm = volume of coating, in liters;
Vw = volume of water, in liters; and
Vec = volume of exempt compounds, in liters

VOC regulatory must include maximum amount of thinning solvent recommended by the manufacturer.

"Waterproofing membrane" means a clear or opaque coating that is labeled and formulated for application to concrete and masonry surfaces to provide a seamless waterproofing membrane that prevents any penetration of liquid water into the substrate.

(1) Waterproofing membranes are intended for the following waterproofing applications: below-grade surfaces, between concrete slabs, inside tunnels, inside concrete planters, and under flooring materials.

(2) The waterproofing membrane category does not include topcoats that are included in the concrete/masonry sealer category (e.g., parking deck topcoats, pedestrian deck topcoats, etc.).

(3) Waterproofing Membranes shall:

(a) Be applied in a single coat of at least 25 mils (at least 0.025 inch) dry film thickness; and

(b) Meet or exceed the requirements contained in ASTM C836-06.

"Wood coatings" means coatings labeled and formulated for application to wood substrates only and include clear and semitransparent coatings: lacquers; varnishes; sanding sealers; penetrating oils; clear stains; wood conditioners used as undercoats; and wood sealers used as topcoats. The Wood Coatings category also includes the following opaque wood coatings: opaque lacquers, opaque sanding sealers, and opaque lacquer undercoaters but do not include clear sealers that are labeled and formulated for use on concrete/masonry surfaces or coatings intended for substrates other than wood.

"Wood preservative" means a coating labeled and formulated to protect exposed wood from decay or insect attack that is registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code (U.S.C.) Section 136, et seq.).

"Wood substrate" means a substrate made of wood, particleboard, plywood, medium density fiberboard, rattan, wicker, bamboo, or composite products with exposed wood grain but does not include items comprised of simulated wood.

"Zinc-rich primer" means a coating that contains at least 65% metallic zinc powder or zinc dust by weight of total solids and is formulated for application to metal substrates to provide a firm bond between the substrate and subsequent applications of coatings and are intended for professional use only.

R307-361-4. Exemptions.

The coatings described in R307-361-4(1) through (3) are exempt from the requirements of R307-361.

(1) Any architectural coating that is supplied, sold, offered for sale, or manufactured for use outside of the counties in R307-361-2 or for shipment to other manufacturers for reformulation or repackaging.

(2) Any aerosol coating product.

(3) Any architectural coating that is sold in a container with a volume of one liter (1.057 quarts) or less, including kits containing containers of different colors, types or categories of coatings and two component products and including multiple containers of one liter or less that are packaged and shipped together with no intent or requirement to ultimately be sold as one unit.

(a) The exemption in R307-361-4(3) does not include bundling of containers one liter or less, which are sold together as a unit with the intent or requirement that they be combined into one container.

(b) The exemption in R307-361-4(3) does not include packaging from which the coating cannot be applied. This exemption does include multiple containers of one liter or less that are packaged and shipped together with no intent or requirement to ultimately sell as one unit.

(4) The requirements of R307-361-5 Table 1 do not apply to operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and or on site at installations owned and or operated by the United States Armed Forces.

R307-361-5. Standards.

(1) Except as provided in R307-361-4, no person shall manufacture, blend, or repackage, supply, sell, or offer for sale within the counties in R307-361-2; or solicit for application or apply within those counties any architectural coating with a VOC content in excess of the corresponding limit specified in Table 1.

TABLE 1

VOC Content Limit for Architectural and Industrial Maintenance Coatings

(Limits are expressed as VOC content, thinned to the manufacturer's maximum thinning recommendation, excluding any colorant added to tint bases.)

COATING CATEGORY	VOC Content Limit (grams/liter)
Flat coatings	50
Non-flat coatings	100
Non-flat/high-gloss coatings	150
Specialty Coatings	
Aluminum roofing	450
Basement Specialty Coatings	400
Bituminous Specialty Coatings	400
Bituminous roof coatings	270
Bituminous roof primers	350
Bond beakers	350
Calcimine recoaters	475
Concrete curing compounds	350
Concrete/masonary sealer	100
Concrete surface retarders	780
Conjugated oil varnish	450
Conversion varnish	725
Driveway sealers	50
Dry fog coatings	150
Faux finishing coatings	350
Fire resistive coatings	350
Floor coatings	100
Form-release compounds	250
Graphic arts coatings	500

(sign paints)	
High temperature coatings	420
Impacted Immersion Coatings	780
Industrial maintenance coatings	250
Low solids coatings	120
Magnesite cement coatings	450
Mastic texture coatings	100
Metallic pigmented coatings	500
Multi-color coatings	250
Nuclear coatings	450
Pre-treatment wash primers	420
Primers, sealers, and undercoaters	100
Reactive penetrating sealer	350
Reactive penetrating carbonate stone sealer	500
Recycled coatings	250
Roof coatings	250
Rust preventative coatings	250
Shellacs:	
Clear	730
Opaque	550
Specialty primers, sealers, and undercoaters	100
Stains	250
Stone consolidant	450
Swimming pool coatings	340
Thermoplastic rubber coatings and mastic	550
Traffic marking coatings	100
Tub and tile refinish	420
Waterproofing membranes	250
Wood coating	275
Wood Preservatives	350
Zinc-Rich Primer	340

(2) If a coating is recommended for use in more than one of the specialty coating categories listed in Table 1, the most restrictive (lowest) VOC content limit shall apply.

(a) This requirement applies to usage recommendations that appear anywhere on the coating container, anywhere on any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf.

(b) R307-361-5(2) does not apply to the following coating categories:

(i) Aluminum roof coatings
(ii) Bituminous roof primers
(iv) High temperature coatings
(v) Industrial maintenance coatings
(vi) Low-solids coatings
(vii) Metallic pigmented coatings
(viii) Pretreatment wash primers
(ix) Shellacs
(x) Specialty primers, sealers and undercoaters
(xi) Wood Coatings
(xii) Wood preservatives
(xiii) Zinc-rich primers
(xiv) Calcimine recoaters
(xv) Impacted immersion coatings
(xvi) Nuclear coatings
(xvii) Thermoplastic rubber coatings and mastic
(xviii) Concrete surface retarders
(xix) Conversion varnish

(3) Sell-through of coatings. A coating manufactured prior to January 1, 2015, may be sold, supplied, or offered for sale for up to three years after January 1, 2015.

(a) A coating manufactured before January 1, 2015, may be applied at any time.

(b) R307-361-5(3) does not apply to any coating that does not display the date or date code required by R307-361-6(1)(a).

(4) Painting practices. All architectural coating containers used when applying the contents therein to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging or other means, shall be closed when not in use. These architectural coating containers include, but are not limited to, drums, buckets, cans, pails, trays or other application containers. Containers of any VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

(5) Thinning. No person who applies or solicits the application of any architectural coating shall apply a coating that is thinned to exceed the applicable VOC limit specified in Table 1.

(6) Rust preventative coatings. No person shall apply or solicit the application of any rust preventative coating manufactured before January 1, 2015 for industrial use, unless such a rust preventative coating complies with the industrial maintenance coating VOC limit specified in Table 1.

(7) Coatings not listed in Table 1. For any coating that does not meet any of the definitions for the specialty coatings categories listed in Table 1, the VOC content limit shall be determined by classifying the coating as a flat, non-flat, or non-flat/high gloss coating, based on its gloss, as defined in R307-361-3 and the corresponding flat, non-flat, or non-flat/high gloss coating VOC limit in Table 1 shall apply.

R307-361-6. Container Labeling Requirements.

(1) Each manufacturer of any architectural coating subject to R307-361 shall display the information listed in R307-361-6(1)(a) through (c) on the coating container (or label) in which the coating is sold or distributed.

(a) Date Code.

(i) The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid or bottom of the container.

(ii) If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the director upon request.

(b) Thinning Recommendations.

(i) A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the container.

(ii) This requirement does not apply to the thinning of architectural coatings with water.

(iii) If thinning of the coating prior to use is not necessary, the recommendation shall specify that the coating is to be applied without thinning.

(c) VOC Content.

(i) Each container of any coating subject to this rule shall display one of the following values, in grams of VOC per liter of coating:

(A) Maximum VOC content as determined from all potential product formulations;

(B) VOC content as determined from actual formulation data; or

(C) VOC content as determined using the test methods in R307-361-8.

(ii) If the manufacturer does not recommend thinning, the container shall display the VOC Content, as supplied.

(iii) If the manufacturer recommends thinning, the container shall display the VOC Content, including the maximum amount of thinning solvent recommended by the manufacturer.

(iv) If the coating is a multicomponent product, the container shall display the VOC content as mixed or catalyzed.

(v) If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content shall include the VOCs emitted during curing.

(2) Faux finishing coatings. The labels of all clear topcoat faux finishing coatings shall prominently display the statement, "This product can only be sold or used as part of a faux finishing coating system."

(3) Industrial maintenance coatings. The label of all industrial maintenance coatings shall prominently display at least one of the following statements:

(a) "for industrial use only;"
(b) "for professional use only;" or
(c) "not for residential use" or "not intended for residential use."

(4) Rust preventative coatings. The labels of all rust preventative coatings shall prominently display the statement, "For metal substrates only."

(5) Non-flat/high-gloss coatings. The labels of all non-flat/high-gloss coatings shall prominently display the words "high gloss."

(6) Specialty primers, sealers and undercoaters. The labels of all specialty primers, sealers and undercoaters shall prominently display one or more of the following descriptions:
(a) "For blocking stains;"
(b) "For smoke-damaged substrates;"
(c) "For fire-damaged substrates;"
(d) "For water-damaged substrates;" or
(e) "For excessively chalky substrates."

(7) Reactive penetrating sealers. The labels of all reactive penetrating sealers shall prominently display the statement, "Reactive penetrating sealer."

(8) Reactive penetrating carbonate stone sealers. The labels of all reactive penetrating carbonate stone sealers shall prominently display the statement, "Reactive penetrating carbonate stone sealer."

(9) Stone consolidants. The labels of all stone consolidants shall prominently display the statement, "Stone consolidant -For professional use only."

(10) Wood coatings. The labels of all wood coatings shall prominently display the statement, "For wood substrates only."

(11) Zinc rich primers. The labels of all zinc rich primers shall prominently display one or more of the following descriptions:
(a) "For professional use only;"
(b) "For industrial use only;" or
(c) "Not for residential use" or "Not intended for residential use."

R307-361-7. Reporting Requirements.

(1) Within 180 days of written request from the director, the manufacturer shall provide the director with data concerning the distribution and sales of architectural coatings, including, but not limited to:
(a) The name and mailing address of the manufacturer;
(b) The name, address and telephone number of a contact person;
(c) The name of the coating product as it appears on the label and the applicable coating category;
(d) Whether the product is marketed for interior or exterior use or both;
(e) The number of gallons sold in counties listed in R307-361-2 in containers greater than one liter (1.057 quart) and equal to or less than one liter (1.057 quart);
(f) The VOC actual content and VOC regulatory content in grams per liter;
(i) If thinning is recommended, list the VOC actual content and VOC regulatory content after maximum recommended thinning.
(ii) If containers less than one liter have a different VOC content than containers greater than one liter, list separately.
(iii) If the coating is a multi-component product, provide the VOC content as mixed or catalyzed.
(g) The names and CAS numbers of the VOC constituents in the product;
(h) The names and CAS numbers of any compounds in the product specifically exempted from the VOC definition in R307-101;
(i) Whether the product is marketed as solvent-borne, waterborne, or 100% solids;
(j) Description of resin or binder in the product;
(k) whether the coating is a single-component or multi-component product;
(l) The density of the product in pounds per gallon;
(m) The percent by weight of: solids, all volatile materials, water, and any compounds in the product specifically exempted from the VOC definition in R307-101; and
(n) The percent by volume of: solids, water, and any compounds in the product specifically exempted from the VOC definition in R307-101.

R307-361-8. Test Methods.

(1) Determination of VOC content.
(a) For the purpose of determining compliance with the VOC content limits in Table 1, the VOC content of a coating shall be calculated by following the appropriate formula found in the definitions of VOC actual, VOC content, and VOC regulatory found in R307-361-3.
(b) The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured.
(c) If the manufacturer does not recommend thinning, the VOC content shall be calculated for the product as supplied.
(d) If the manufacturer recommends thinning, the VOC content shall be calculated including the maximum amount of thinning solvent recommended by the manufacturer.
(e) If the coating is a multi-component product, the VOC content shall be calculated as mixed or catalyzed.
(f) The coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOC during the curing process, the VOC content shall include the VOCs emitted during curing.

(2) VOC content of coatings.
(a) To determine the VOC content of a coating, the manufacturer may use EPA Method 24, SCAQMD Method 304-91 (revised February1996), or an alternative method, formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (e.g., quality assurance checks, recordkeeping).
(b) If there are any inconsistencies between the results of EPA Method 24 test and any other means for determining VOC content, the EPA Method 24 test results will govern.
(c) The exempt compounds content shall be determined by ASTM D 3960-05, SCAQMD Method 303-91 (Revised 1993), BAAQMD Method 43 (Revised 1996), or BAAQMD Method 41 (Revised 1995), as applicable.

(3) Methacrylate traffic marking coatings. Analysis of methacrylate multicomponent coatings used as traffic marking coatings shall be conducted according to a modification of EPA Method 24 (40 CFR 59, subpart D, Appendix A), which has not been approved for methacrylate multicomponent coatings used for purposes other than as traffic marking coatings or for other classes of multicomponent coatings.

(4) Flame spread index. The flame spread index of a fire-retardant coating shall be determined by ASTM E84-10, "Standard Test Method for Surface Burning Characteristics of Building Materials."

(5) Fire resistance rating. The fire resistance rating of a fire-resistive coating shall be determined by ASTM E119-08, "Standard Test Methods for Fire Tests of Building Construction and Materials."

(6) Gloss determination. The gloss of a coating shall be determined by ASTM D523-89 (1999), "Standard Test Method for Specular Gloss."

(7) Metal content of coatings. The metallic content of a coating shall be determined by SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction, SCAQMD Laboratory Methods of Analysis for Enforcement Samples."

(8) Acid content of coatings. The acid content of a coating shall be determined by ASTM D1613-06, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products."

(9) Drying times. The set-to-touch, dry-hard, dry-to-touch and dry-to-recoat times of a coating shall be determined by ASTM D1640-95 (1999), "Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature," and the tack-free time of a quick-dry enamel coating shall be determined by the Mechanical Test Method of ASTM D1640-95.

(10) Surface chalkiness. The chalkiness of a surface shall be determined by using ASTM D4214-07, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films."

(11) Exempt compounds-siloxanes. Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be analyzed as exempt compounds by methods referenced in ASTM D 3960-05, "Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings" or by BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996.

(12) Exempt compounds-parachlorobenzotrifluoride (PCBTF). The exempt compound PCBTF, shall be analyzed as an exempt compound by methods referenced in ASTM D 3960-05 "Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings" or by BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent Based Coatings and Related Materials Containing Parachlorobenzotriflouride," BAAQMD Manual of Procedures, Volume III, adopted December 20, 1955.

(13) Tub and tile refinish coating adhesion. The adhesion of tub and tile coating shall be determined by ASTM D4585-99, "Standard Practice for Testing Water Resistance of Coatings Using Controlled Condensation" and ASTM D3359-02, "Standard Test Methods for Measuring Adhesion by Tape Test."

(14) Tub and tile refinish coating hardness. The hardness of tub and tile refinish coating shall be determined by ASTM D3363-05, "Standard Test Method for Film Hardness by Pencil Test."

(15) Tub and tile refinish coating abrasion resistance. Abrasion resistance of tub and tile refinish coating shall be analyzed by ASTM D4060-07, "Standard Test Methods for Abrasion Resistance of Organic Coatings by the Taber Abraser."

(16) Tub and tile refinish coating water resistance. Water resistance of tub and tile refinish coatings shall be determined by ASTM D4585-99, "Standard Practice for Testing Water Resistance of Coatings Using Controlled Condensation" and ASTM D714-02e1, "Standard Test Method for Evaluating Degree of Blistering of Paints."

(17) Waterproofing membrane. Waterproofing membrane shall be tested by ASTM C836-06, "Standard Specification for High Solids Content, Cold Liquid-Applied Elastomeric Waterproofing Membrane for Use with Separate Wearing Course."

(18) Reactive penetrating sealer and reactive carbonate stone sealer water repellency. Reactive penetrating sealer and reactive carbonate stone sealer water repellency shall be analyzed by ASTM C67-07, "Standard Test Methods for Sampling and Testing Brick and Structural Clay Tile;" ASTM C97-02, "Standard Test Methods for Absorption and Bulk Specific Gravity of Dimension Stone;" or ASTM C140-06, "Standard Test Methods for Sampling and Testing Concrete Masonry Units and Related Units."

(19) Reactive penetrating sealer and reactive penetrating carbonate stone sealer water vapor transmission. Reactive penetrating sealer and reactive penetrating carbonate stone sealer water vapor transmission shall be analyzed ASTM E96/E96M-05, "Standard Test Method for Water Vapor Transmission of Materials."

(20) Reactive penetrating sealer -chloride screening applications. Reactive penetrating sealers shall be analyzed by National Cooperative Highway Research Report 244 (1981), "Concrete Sealers for the Protection of Bridge Structures."

(21) Stone consolidants. Stone consolidants shall be tested by using ASTM E2167-01, "Standard Guide for Selection and Use of Stone Consolidants."

(22) Radiation resistance -nuclear coatings. The radiation resistance of a nuclear coating shall be determined by ASTM D 4082-02, "Standard Test Method for Use in Light Water Nuclear Power Plants."

(23) Chemical resistance-nuclear coatings. The chemical resistance of nuclear coatings shall be determined by ASTM D3912-95 (2001), "Standard Test Method for Chemical Resistance of Coatings Used in Light Water Nuclear Power Plants."

R307-361-9. Compliance Schedule.

Persons subject to this rule shall be in compliance by January 1, 2015.

KEY: air pollution, emission controls, architectural coatings
October 31, 2013 19-2-104(1)
19-2-101

R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.
R307-401-1. Purpose.

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the director determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the director may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The director will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the director, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the director for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the director.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the director and receive an approval order prior to intiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the director will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307- 401-5, the director will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the director will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the director's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A 30-day public comment period will be established.

(ii) A request to extend the length of the comment period, up to 30 days, may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iii) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iv) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(v) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the director to review plans and specifications.

(3) The director will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The director will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the director may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the director under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the director determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the director will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM_{10}, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a)(or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The director will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the director. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air contaminant emitted by the stationary source.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replacement process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the director before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the director will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the approval order requirements of R307-401-5 through 8 if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the director is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the director no later than 60 days after the changes are made. The director will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the director to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the director. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the director or the director's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in R307-401-15(1) to the director prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.

(a) Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.

(b) Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.

(c) Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.

(d) The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements

of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the director prior to beginning the remediation project:

(1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);

(2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and

(3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The director will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the director at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the director as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the director in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the director may revoke the approval order.

KEY: air pollution, permits, approval orders, greenhouse gases

October 3, 2013 19-2-104(3)(q)

Notice of Continuation June 6, 2012 19-2-108

R309. Environmental Quality, Drinking Water.
R309-105. Administration: General Responsibilities of Public Water Systems.
R309-105-1. Purpose.

The purpose of this rule is to set forth the general responsibilities of public water systems, water system owners and operators.

R309-105-2 Authority.
R309-105-3 Definitions.
R309-105-4 General.
R309-105-5 Exemptions from Monitoring Requirements.
R309-105-6 Construction of Public Drinking Water Facilities.
R309-105-7 Source Protection Plans.
R309-105-8 Existing Water System Facilities.
R309-105-9 Minimum Pressure.
R309-105-10 Operation and Maintenance Procedures.
R309-105-11 Operator Certification.
R309-105-12 Cross Connection Control.
R309-105-13 Finished Water Quality.
R309-105-14 Operational Reports.
R309-105-15 Annual Reports.
R309-105-16 Reporting Test Results.
R309-105-17 Record Maintenance.
R309-105-18 Emergencies.

R309-105-2. 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 of the Utah Code and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-105-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-105-4. General.

Water suppliers are responsible for the quality of water delivered to their customers. In order to give the public reasonable assurance that the water which they are consuming is satisfactory, the Board has established rules for the design, construction, water quality, water treatment, contaminant monitoring, source protection, operation and maintenance of public water supplies.

R309-105-5. Exemptions from Monitoring Requirements.

(1) The applicable requirements specified in R309-205, R309-210 and R309-215 for monitoring shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(2) When a public water system supplies water to one or more other public water systems, the Director may modify the monitoring requirements imposed by R309-205, R309-210 and R309-215 to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(3) In no event shall the Director authorize modifications in the monitoring requirements which are less stringent than requirements established by the Federal Safe Drinking Water Act.

R309-105-6. Construction of Public Drinking Water Facilities.

The following requirements pertain to the construction of public water systems.

(1) Approval of Engineering Plans and Specifications

(a) Complete plans and specifications for all public drinking water projects, as described in R309-500-5, shall be approved in writing by the Director prior to the commencement of construction. A 30-day review time should be assumed.

(b) Appropriate engineering reports, supporting information and master plans may also be required by the Director as needed to evaluate the proposed project. A certificate of convenience and necessity or an exemption therefrom, issued by the Public Service Commission, shall be filed with the Director prior to approval of any plans or specifications for projects described in R309-500-4(1) as new or previously un-reviewed water system.

(2) Acceptable Design and Construction Methods

(a) The design and construction methods of all public drinking water facilities shall conform to the applicable standards contained in R309-500 through R309-550 of these rules. The Director may require modifications to plans and specifications before approval is granted.

(b) There may be times in which the requirements of the applicable standards contained in R309-500 through R309-550 are not appropriate. Thus, the Director may grant an "exception" to portions of these standards if it can be shown that the granting of such an exception will not jeopardize the public health. In order for the Director to consider such a request, the public drinking water system shall submit a written request directly from the management of the public dinking water system, preferably on system letterhead, that includes the following:

(i) citation of the specific rule for which the "exception" is being requested;

(ii) a detailed explanation, drawings may be included, of why the conditions of rule cannot be met;

(iii) what the system proposes, drawings may be included, in lieu of rule;

(iv) justification the proposed alternative will protect the public health to a similar or better degree than required by rule.

Physical conditions as well as cost may be justification for requesting an "exception-to-rule."

(c) Alternative or new treatment techniques may be developed which are not specifically addressed by the applicable standards contained in R309-500 through R309-550. These treatment techniques may be accepted by the Director if it can be shown that:

(i) They will result in a finished water meeting the requirements of R309-200 of these regulations.

(ii) The technique will produce finished water which will protect public health to the same extent provided by comparable treatment processes outlined in the applicable standards contained in R309-500 through R309-550.

(iii) The technique is as reliable as any comparable treatment process governed by the applicable standards contained in R309-500 through R309-550.

(3) Description of "Public Drinking Water Project"

Refer to R309-500-5 for the description of a public drinking water project and R309-500-6 for required items to be submitted for plan approval.

(4) Specifications for the drilling of a public water supply well may be prepared and submitted by a licensed well driller holding a current Utah Well Driller's Permit if authorized by the Director.

(5) Drawing Quality and Size

Drawings which are submitted shall be compatible with Division of Drinking Water Document storage. Drawings which are illegible or of unusual size will not be accepted for

review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(6) Requirements After Approval of Plans for Construction

After the approval of plans for construction, and prior to operation of any facilities dealing with drinking water, the items required by R309-500-9 shall be submitted and an operating permit received.

R309-105-7. Source Protection.

(1) Public Water Systems are responsible for protecting their sources of drinking water from contamination. R309-600 and R309-605 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

(2) R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water.

(3) R309-605 applies to PWSs which obtain surface water prior to treatment and distribution and to PWSs obtaining water from ground-water sources which are under the direct influence of surface water. However, compliance with this rule is voluntary for public transient non-community water systems to the extent that they are using existing surface water sources of drinking water.

R309-105-8. Existing Water System Facilities.

(1) All public water systems shall deliver water meeting the applicable requirements of R309-200 of these rules.

(2) Existing facilities shall be brought into compliance with R309-500 through R309-550 or shall be reliably capable of delivering water meeting the requirements of R309-200.

(3) In situations where a water system is providing water of unsatisfactory quality, or when the quality of the water or the public health is threatened by poor physical facilities, the water system management shall solve the problem(s).

R309-105-9. Minimum Water Pressure.

(1) Unless otherwise specifically approved by the Director, no water supplier shall allow any connection to the water system where the dynamic water pressure at the point of connection will fall below 20 psi during the normal operation of the water system. Water systems approved prior to January 1, 2007, are required to maintain the above minimum dynamic water pressure at all locations within their distribution system. Existing public drinking water systems, approved prior to January 1, 2007, which expand their service into new areas or supply new subdivisions shall meet the minimum dynamic water pressure requirements in R309-105-9(2) at any point of connection in the new service areas or new subdivisions.

(2) Unless otherwise specifically approved by the Director, new public drinking water systems constructed after January 1, 2007 shall be designed and shall meet the following minimum water pressures at points of connection:

(a) 20 psi during conditions of fire flow and fire demand experienced during peak day demand;

(b) 30 psi during peak instantaneous demand; and

(c) 40 psi during peak day demand.

(3) Individual home booster pumps are not allowed as indicated in R309-540-5(4)(c).

R309-105-10. Operation and Maintenance Procedures.

All routine operation and maintenance of public water supplies shall be carried out with due regard for public health and safety. The following sections describe procedures which shall be used in carrying out some common operation and maintenance procedures.

(1) Chemical Addition

(a) Water system operators shall determine that all chemicals added to water intended for human consumption are suitable for potable water use and comply with ANSI/NSF Standard 60.

(b) No chemicals or other substances shall be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Director.

(c) Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Director. Residual checks shall be taken a minimum of three times each week by the operator of any system using disinfectants. The Director may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, shall use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division of Drinking Water.

(2) New and Repaired Mains

(a) All new water mains shall meet the requirements of R309-550-6 with regard to materials of construction. All products in contact with culinary water shall comply with ANSI/NSF Standard 61.

(b) All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The chlorine solution shall be flushed from the water main with potable water prior to the main being placed in use.

(c) All products used to recoat the interiors of storage structures and which may come in contact with culinary water shall comply with ANSI/NSF Standard 61.

(3) Reservoir Maintenance and Disinfection

After a reservoir has been entered for maintenance or re-coating, it shall be disinfected prior to being placed into service. Procedures given in AWWA Standard C651-92 shall be followed in this regard.

(4) Spring Collection Area Maintenance

(a) Spring collection areas shall be periodically cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas 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 meets the requirements of these rules (see R309-515-7).

(5) Security

All water system facilities such as spring junction boxes, well houses, reservoirs, and treatment facilities shall be secure.

(6) Seasonal Operation

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-92 and C652-92 prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

(7) Pump Lubricants

All oil lubricated pumps for culinary wells shall utilize

mineral oils suitable for human consumption as determined by the Director. To assure proper performance, and to prevent the voiding of any warranties which may be in force, the water supplier should confirm with individual pump manufacturers that the oil which is selected will have the necessary properties to perform satisfactorily.

R309-105-11. Operator Certification.

All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water shall have an appropriately certified operator in accordance with the requirements of these rules. Refer to R309-300, Certification Rules for Water Supply Operators, for specific requirements.

R309-105-12. Cross Connection Control.

(1) The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 6 of the 2009 International Plumbing Code and its amendments as adopted by the Department of Commerce under R156-56 shall be met with respect to cross connection control and backflow prevention.

(2) Each water system shall have a functioning cross connection control program. The program shall consist of five designated elements documented on an annual basis. The elements are:

(a) a legally adopted and functional local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy);

(b) providing public education or awareness material or presentations;

(c) an operator with adequate training in the area of cross connection control or backflow prevention;

(d) written records of cross connection control activities, such as, backflow assembly inventory; and

(e) test history and documentation of on-going enforcement (hazard assessments and enforcement actions) activities.

(3) Suppliers shall maintain, as proper documentation, an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

(4) Backflow prevention assemblies shall be in-line serviceable (repairable), in-line testable and have certification through third party certifying agencies to be used within a public drinking water system. Third party certification shall consist of any combination of two certifications, laboratory or field, performed by a recognized testing organization which has demonstrated competency to perform such tests.

(5) Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work as specified in R309-305. Suppliers shall maintain, as proper documentation, records of these inspections. This testing responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

(6) Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

R309-105-13. Finished Water Quality.

All public water systems are required to monitor their water according to the requirements of R309-205, R309-210 and R309-215 to determine if the water quality standards of R309-200 have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-220.

R309-105-14. Operational Reports.

(1) Written Operational Reports.

(a) If, in the opinion of the Director, a water system is not properly operated, the Director may require a public water system to submit a written operational report covering the operation of the whole or a part of the water system's infrastructure.

(b) The Director may require revisions to the submitted operational report to ensure satisfactory operation, and may order the water system to follow the operational report.

(c) If the water system fails to implement the provisions of the operational report, as evidenced by unsatisfactory delivery of a safe and/or reliable supply of drinking water, the Director may order further remedies as deemed necessary.

(2) Treatment techniques for acrylamide and epichlorohydrin.

(a) Each public water system shall certify annually in writing to the Director (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-215-8(2)(c).

(b) Certifications may rely on manufacturer's data.

(3)(a) All water systems using chemical addition or specialized equipment for the treatment of drinking water shall regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

(b) The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Director.

R309-105-15. Annual Reports.

All community water systems shall be required to complete annual report forms furnished by the Division of Drinking Water. The information to be provided shall include: the status of all water system projects started during the previous year; water demands met by the system; problems experienced; and anticipated projects.

R309-105-16. Reporting Test Results.

(1) If analyses are made by certified laboratories other than the state laboratory, these results shall be forwarded to the Division as follows:

(a) The supplier shall report to the Division the analysis of water samples which fail to comply with the Primary Drinking Water Standards of R309-200. Except where a different reporting period is specified in R309-205, R309-210 or R309-215, this report shall be submitted within 48 hours after the supplier receives the report from his lab. The Division may be reached at (801)536-4200.

(b) Monthly summaries of bacteriologic results shall be submitted within ten days following the end of each month.

(c) All results of TTHM samples shall be reported to the Division within 10 days of receipt of analysis for systems monitoring pursuant to R309-210-9.

(d) For all samples other than samples showing unacceptable results, bacteriologic samples or TTHM samples, the time between the receipt of the analysis and the reporting of the results to the Division shall not exceed 40 days.

(e) Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

(f) There are additional reporting requirements in other sections of the rules, see R309-215-16(5).

(2) Disinfection byproducts, maximum residual disinfectant levels and disinfection byproduct precursors and enhanced coagulation or enhanced softening. This section applies to the reporting requirements of R309-210-8, R309-215-12 and R309-215-13. For the reporting requirements of R309-210-9, R309-210-10 and R309-215-15 are contained within R309-210-9, R309-210-10 and R309-215-15, respectively.

(a) Systems required to sample quarterly or more frequently shall report to the State within 10 days after the end of each quarter in which samples were collected. Systems required to sample less frequently than quarterly shall report to the State within 10 days after the end of each monitoring period in which samples were collected. The Director may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(b) Disinfection byproducts. Systems shall report the information specified.

(i) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) on a quarterly or more frequent basis shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of all samples taken in the last quarter.

(D) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters.

(E) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(ii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than quarterly (but at least annually) shall report:

(A) The number of samples taken during the last year.

(B) The location, date, and result of each sample taken during the last monitoring period.

(C) The arithmetic average of all samples taken over the last year.

(D) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than annually shall report:

(A) The location, date, and result of the last sample taken.

(B) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iv) Systems monitoring for chlorite under the requirements of R309-210-8(2) shall report:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter.

(C) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system.

(D) Whether, based on R309-210-8(6)(b)(ii), the MCL was violated.

(v) System monitoring for bromate under the requirements of R309-210-8(2) shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether, based on R309-210-8(6)(b)(iii), the MCL was violated.

(c) Disinfectants. Systems shall report the information specified to the Director within ten days after the end of each month the system serves water to the public, except as otherwise noted:

(i) Systems monitoring for chlorine or chloramines under the requirements of R309-210-8(3)(a) shall report and certify, by signing the report form provided by the Director, that all the information provided is accurate and correct and that any chemical introduced into the drinking water complies with ANSI/NSF Standard 60:

(A) The number of samples taken during each month of the last quarter.

(B) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(C) The arithmetic average of all monthly averages for the last 12 months.

(D) The additional data required in R309-210-8(3)(a)(ii).

(E) Whether, based on R309-210-8(6)(c)(i), the MRDL was violated.

(ii) Systems monitoring for chlorine dioxide under the requirements of R309-210-8(3) shall report:

(A) The dates, results, and locations of samples taken during the last quarter.

(B) Whether, based on R309-210-8(6)(c)(ii), the MRDL was violated.

(C) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems shall report the information specified.

(i) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and required to meet the enhanced coagulation or enhanced softening requirements in R309-215-13(2)(b) or (c) shall report:

(A) The number of paired (source water and treated water) samples taken during the last quarter.

(B) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.

(C) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

(D) Calculations for determining compliance with the TOC percent removal requirements, as provided in R309-215-13(3)(a).

(E) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in R309-215-13(2) for the last four quarters.

(ii) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and meeting one or more of the alternative compliance criteria in R309-215-13(1)(b) or (c) shall report:

(A) The alternative compliance criterion that the system is using.

(B) The number of paired samples taken during the last quarter.

(C) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(D) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in R309-215-13(1)(b)(i) or (iii) or of treated water TOC for systems meeting the criterion in R309-215-13(1)(b)(ii).

(E) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in R309-215-13(1)(b)(v) or of treated water SUVA for systems meeting the criterion in R309-215-13(1)(b)(vi).

(F) The running annual average of source water alkalinity for systems meeting the criterion in R309-215-13(1)(b)(iii) and of treated water alkalinity for systems meeting the criterion in

R309-215-13(1)(c)(i).

(G) The running annual average for both TTHM and HAA5 for systems meeting the criterion in R309-215-13(1)(b)(iii) or (iv).

(H) The running annual average of the amount of magnesium hardness removal (as $CaCO_3$, in mg/L) for systems meeting the criterion in R309-215-13(1)(c)(ii).

(I) Whether the system is in compliance with the particular alternative compliance criterion in R309-215-13(1)(b) or (c).

(3) The public water system, within 10 days of completing the public notification requirements under R309-220 for the initial public notice and any repeat notices, shall submit to the Division a certification that it has fully complied with the public notification regulations. The public water system shall include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

(4) All samples taken in accordance with R309-215-6 shall be submitted within 10 days following the end of the operational period specified for that particular treatment. Finished water samples results for the contaminant of concern that exceed the Primary Drinking Water Standards of R309-200, shall be reported to the Division within 48 hours after the supplier receives the report. The Division may be reached at (801) 536-4000.

(5) Documentation of operation and maintenance for point-of-use or point-of-entry treatment units shall be provided to the Division annually. The Division shall receive the documentation by January 31 annually.

R309-105-17. Record Maintenance.

All public water systems shall retain on their premises or at convenient location near their premises the following records:

(1) Records of microbiological analyses and turbidity analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(a) The date, place and time of sampling, and the name of the person who collected the sample;

(b) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample.

(c) Date of analysis;

(d) Laboratory and person responsible for performing analysis;

(e) The analytical technique/method used; and

(f) The results of the analysis.

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Director determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years.

(3) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(4) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

(5) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(6) Records that concern the tests of a backflow prevention assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

(7) Copies of public notices issued pursuant to R309-220 and certifications made to the Director pursuant to R309-105-16 shall be kept for three years after issuance.

(8) Copies of monitoring plans developed pursuant to these rules shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under R309-105-17(1), except as otherwise specified. In all cases the monitoring plans shall be kept as long as the any associated report.

(9) A water system must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your IDSE report. If the Director modifies the R309-210-10 monitoring requirements that you recommended in your IDSE report or if the Director approves alternative monitoring locations, you must keep a copy of the Director's notification on file for 10 years after the date of the Director's notification. You must make the IDSE report and any Director notification available for review by the Director or the public.

(10) A water system must retain a complete copy of its 40/30 certification submitted under this R309-210-9 for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any Director notification available for review by the Director or the public.

(11) A water subject to the disinfection profiling requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

(12) A water system subject to the disinfection benchmarking requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

R309-105-18. Emergencies.

(1) The Director or the local health department shall be informed by telephone by a water supplier of any "emergency situation". The term "emergency situation" includes the following:

(a) The malfunction of any disinfection facility such that a detectable residual cannot be maintained at all points in the distribution system.

(b) The malfunction of any "complete" treatment plant such that a clearwell effluent turbidity greater than 5 NTU is maintained longer than fifteen minutes.

(c) Muddy or discolored water (which cannot be explained by air entrainment or re-suspension of sediments normally deposited within the distribution system) is experienced by a significant number of individuals on a system.

(d) An accident has occurred which has, or could have, permitted the entry of untreated surface water and/or other contamination into the system (e.g. break in an unpressurized transmission line, flooded spring area, chemical spill, etc.)

(e) A threat of sabotage has been received by the water supplier or there is evidence of vandalism or sabotage to any public drinking water supply facility which may affect the quality of the delivered water.

(f) Any instance where a consumer reports becoming sick by drinking from a public water supply and the illness is substantiated by a doctor's diagnosis (unsubstantiated claims should also be reported to the Division of Drinking Water, but this is not required).

(2) If an emergency situation exists, the water supplier shall then contact the Division in Salt Lake City within eight hours. Division personnel may be reached at all times through 801-536-4123.

(3) All suppliers are advised to develop contingency plans

to cope with possible emergency situations. In many areas of the state the possibility of earthquake damage shall be realistically considered.

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R309. Environmental Quality, Drinking Water.
R309-400. Water System Rating Criteria.
R309-400-1. Authority.

Under authority of Utah Code Annotated, Section 19-4-104, the Drinking Water Board adopts this rule in order to evaluate a public water system's standard of operation and service delivered in compliance with R309-100 through R309-705 hereinafter referred to as Rules.

R309-400-2. Extent of Coverage.

These rules shall apply to all public water systems as defined in R309-100.

R309-400-3. Definitions.

Approved - means that the public water system is operating in substantial compliance with all the Rules as measured by this rule.

Community Water System - means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

Contaminant - means any physical, chemical, biological, or radiological substance or matter in water.

Corrective Action - means a provisional rating for a public water system not in compliance with the Rules, but making all the necessary changes outlined by the Director to bring them into compliance.

Director - means the Director of the Division of Drinking Water.

Major Bacteriological Routine Monitoring Violation- means that no routine bacteriological sample was taken as required by R309-210-5(1).

Major Bacteriological Repeat Monitoring Violation - means that no repeat bacteriological sample was taken as required by R309-210-5(2)(a).

Major Chemical Monitoring Violation - means that no initial background chemical sample was taken as required in R309-515-4(5).

Maximum Contaminant Level (MCL) - The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Individual maximum contaminant levels (MCLs) are listed in R309-200.

Minor Bacteriological Routine Monitoring Violation- means that not all of the routine bacteriological samples were taken as required by R309-210-5(1).

Minor Bacteriological Repeat Monitoring Violation - means that not all of the repeat bacteriological samples were taken as required by R309-210-5(2)(a).

Minor Chemical Monitoring Violation - means that the required chemical sample(s) was not taken in accordance with R309-205, 210 or 215.

Non-Community Water System - means a public water system that is not a community water system or a non-transient non-community water system.

Non-Transient, Non-Community Water System - means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.

Not Approved - means the water system does not fully comply with the Rules as measured by this rule.

Public Water System - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least fifteen service connections, or regularly serves an average of at least twenty-five individuals for at least sixty days out of the year. Such term includes collection, treatment, storage and distribution facilities under control of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with system but not under such control.

Routine Chemical Monitoring Violation - means no routine chemical sample(s) was taken as required in R309-205, 210 or 215.

Sanitary Seal - A cap that prevents contaminants from entering a well through the top of the casing.

Shall - means that a particular action is obliged and has to be accomplished.

R309-400-4. Water System Ratings.

(1) The Director shall assign a rating to each public water system in order to provide a concise indication of its condition and performance. This rating shall be assigned based on the evaluation of the operation and performance of the water system in accordance with the requirements of the Rules. Points shall be assessed to Not Approved and Corrective Action rated water systems for each violation of these requirements (R309-100 through R309-705) as the requirements apply to each individual water system. The number of points that shall be assessed are outlined in the following sections of this rule. The number of points represent the threat to the quality of the water and thereby public health.

(2) Points are assessed in the following categories: Quality, Monitoring and Public Notification; Physical Deficiencies; Operator Certification; Cross Connection Control; Drinking Water Source Protection; Administrative Issues; and Reporting and Record Maintenance.

(3) Based upon the accumulation of points, the public water system shall be assigned one of the following ratings.

(a) Approved - In order to qualify for an Approved rating, the public water system must maintain a point total less than the following:

(i) Community water system - 150 points;

(ii) Non-Transient Non-Community water system - 120 points; and

(iii) Non-Community water system - 100 points.

(b) Not Approved - In order for a public water system to receive a Not Approved rating the accumulation of points for the water system must exceed the totals listed above.

(c) Corrective Action - In order to qualify for a Corrective Action rating the public water system must submit the following:

(i) A written agreement to the Director stating a willingness to comply with the requirements set forth in the Rules; and

(ii) A compliance schedule and time table agreed upon by the Director outlining the necessary construction or changes to correct any physical deficiencies or monitoring failures; and

(iii) Proof of the financial ability of the water system or that the financial arrangements are in place to correct the water system deficiencies.

(iv) The Corrective Action rating shall continue until the total project is completed or until a suitable construction inspection or sanitary survey is conducted to determine the effectiveness of the improvements or the accumulation of points drops below the threshold for a not approved rating whichever is later.

(4) The water system point accumulation shall be adjusted on a quarterly basis or as current information is available to the Director. The appropriate water system rating shall then be adjusted to reflect the current point total.

(5) The Director may at any time rate a water system not approved if an immediate threat to public health exists. This rating shall remain in place until such time as the threat is alleviated and the cause is corrected.

(6) Any water system may appeal its assigned rating or assessed points as provided in R305-7.

R309-400-5. Quality, Monitoring and Public Notification Violations.

(1) Bacteriologic: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5(6); or the monitoring requirements in R309-210-5; and the associated public notification requirements in R309-220. The bacteriological assessments shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period or the most recent 4 quarters for those water systems that collect bacteriological samples quarterly.

(a) For each major bacteriological routine monitoring violation 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(b) For each minor bacteriological routine monitoring violation 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(c) For each major bacteriological repeat monitoring violation 40 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) For each minor bacteriological repeat monitoring violation 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(e) For each additional monitoring violation (R309-210-5(2)(e)) 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(f) For each non-acute bacteriological MCL violation (R309-200-5(6)(a)) 40 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) For each acute bacteriological MCL violation (R309-200-5(6)(b)) 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(2) Chemical: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5; or the monitoring requirements in R309-205, 210 and 215; and the associated public notification requirements in R309-220. The chemical assessments shall be updated on a quarterly basis with the total number of points reflecting the most recent compliance period unless otherwise specified. Points for any chemical MCL violation shall remain on record until the quality issue is resolved. Points for any monitoring violation shall be deleted as the required chemical samples are taken and the analytical results are reported to the Director.

(a) Inorganic and Metal Contaminants:

(i) For each major chemical monitoring violation for inorganic and metal contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for inorganic and metal contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for inorganic and metal contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(b) Sulfate (for non-community water systems only):

(i) For each major chemical monitoring violation for sulfate 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for sulfate 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for sulfate 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(c) Radiologic Contaminants:

(i) For each major chemical monitoring violation for radiological contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for radiological contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for radiological contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) Asbestos Contaminants:

(i) For each major chemical monitoring violation for source water or distribution system asbestos 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for source water or distribution system asbestos 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for source water or distribution system asbestos 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(e) Nitrate:

(i) For each routine chemical monitoring violation for nitrate 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each MCL exceedance of nitrate 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(f) Nitrite:

(i) For each routine chemical monitoring violation for nitrite 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each MCL exceedance of nitrite 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) Volatile Organic Chemicals:

(i) For each major chemical monitoring violation for volatile organic chemical contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for volatile organic chemical contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for volatile organic chemical contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(h) Pesticides/PCBs/SOCs

(i) For each major chemical monitoring violation for pesticide/PCB/SOC contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for pesticide/PCB/SOC contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for pesticide/PCB/SOC contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be

assessed.

(i) Disinfection Byproducts:

(i) Total Trihalomethanes:

(A) For each routine chemical monitoring violation for total trihalomethanes 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for total trihalomethanes 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) Haloacetic Acids (HAA5):

(A) For each routine chemical monitoring violation for HAA5 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for HAA5 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(iii) Bromate:

(A) For each routine chemical monitoring violation for bromate 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for bromate 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(iv) Chlorite:

(A) For each routine chemical monitoring violation for chlorite 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for chlorite 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(j) Disinfectant Residuals:

(i) Chlorine:

(A) For each routine chemical monitoring violation for chlorine 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for chlorine 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) Chloramines:

(A) For each routine chemical monitoring violation for chloramines 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each MCL exceedance for chloramines 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(iii) Chlorine Dioxide:

(A) For each routine monitoring violation for chlorine dioxide 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(B) For each non-acute chlorine dioxide MCL violation 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(C) For each acute chlorine dioxide MCL violation 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(k) Lead and Copper:

(i) For each major chemical monitoring violation for lead and copper contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for lead and copper contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) A system which fails to install, by the designated deadline, optimal corrosion control if the lead or copper action level has been exceeded shall be assessed 35 points. For each failure to perform the associated public notification 10 point shall be assessed.

(iv) A system which fails to install source water treatment if the source waters exceed the lead or copper action level shall be assessed 35 points. For each failure to perform the associated public notification 10 points shall be assessed.

(v) A system which fails to complete public notification/education if the lead/copper action levels have been exceeded shall be assessed 10 points for each calendar quarter that the system fails to provide public notification/education.

(vi) A system which still exceeds the lead action level and is not on schedule for lead line replacement shall be assessed 5 points annually. For each failure to perform the associated public notification 2 point shall be assessed.

(l) Groundwater Turbidity:

(i) For each monitoring violation for turbidity 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each confirmed MCL exceedance of turbidity 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(m) Surface Water Treatment:

(i) For water systems having sources which are classified as under direct influence from surface water and which fail to abandon, retrofit or provide conventional complete treatment or it's equivalent within 18 months of notification shall be assessed 150 points. For the associated failure to perform public notification 10 points shall be assessed. The points shall be assessed as the failure occurs and shall remain on record until adequate treatment is provided or the source is physically disconnected.

(ii) Quality and Monitoring: The surface water treatment assessments shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period.

(A) Turbidity:

(I) For each turbidity exceedance which requires tier 1 notification under R309-220-5(1)(e) or (f) 50 points shall be assessed. For the associated failure to perform public notification 10 points shall be assessed.

(II) For each turbidity exceedance which requires tier 2 notification under R309-220-5(1)(e) or (f) 35 points shall be assessed. For the associated failure to perform public notification 10 points shall be assessed.

(III) For each month where the percentage of turbidity interpretations meeting the treatment plant limit is less than 95 percent 25 points shall be assessed. For the associated failure to perform public notification 10 points shall be assessed.

(IV) For any period of time which exceeds 4 hours where the system fails to continuously measure (or perform grab samples) the combined filter effluent turbidity 50 points shall be assessed. For the associated failure to perform public notification 10 points shall be assessed.

(V) For a water system which failure to repair continuous turbidity monitoring equipment within 5 working days 50 points shall be assessed.

(B) Disinfection:

(I) For each instance where the disinfectant level in water entering the distribution system is less than 0.2 milligrams per liter for more than 4 hours 25 points shall be assessed. For the associated failure to perform public notification 5 points shall be assessed.

(II) For each instance where there is insufficient disinfectant contact time 35 points shall be assessed. For the associated failure to perform public notification 5 points shall be assessed.

(iii) Treatment Process Control:

(A) For each instance a treatment facility exceeds the assigned filter rates 30 points shall be assessed.

(B) For each month a water system fails to verify calibration of the plant turbidimeters 5 points shall be assessed.

(C) For each month a water system fails to submit a water treatment plant report 50 points shall be assessed.

R309-400-6. Physical Facilities.

All points assessed to public water systems via this subsection are based upon violation of R309-500 through R309-705 unless otherwise noted. These points shall be assessed and updated upon notification of the Executive Secretary and shall remain until the violation or deficiency no longer exists.

(1) New Source Approval:

(a) Use of an unapproved source shall be assessed 150 points.

(2) Surface Water Diversion Structures and Impoundments:

(a) For each surface water intake structure that does not allow for withdrawal of water from more than one level if quality significantly varies with depth 2 points shall be assessed.

(b) Where no facilities exist for release (wasting) of less desirable water held in storage 2 points shall be assessed.

(c) Where the diversion facilities do not minimize frazil ice formation by holding intake velocities to less than 0.5 feet per second 2 points shall be assessed.

(d) Where diversion facilities are not adequately protected from damage by ice buildup 2 points shall be assessed.

(e) Where diversion facilities are not capable of keeping large quantities of fish or debris from entering the intake 2 points shall be assessed.

(f) Where reservoirs have not had brush and trees removed to the high water level 2 points shall be assessed.

(g) Where reservoir watershed management has not provided adequate precautions to limit nutrient loading 10 points shall be assessed.

(3) Well Sources

(a) For each well which is not equipped with a sanitary seal, or has any unsealed opening into the well casing 50 points shall be assessed.

(b) For each well which does not utilize food grade mineral oil for pump lubrication 25 points shall be assessed.

(c) For each well casing which does not terminate at least 12 inches above the pumphouse floor, 18 inches above ground, and/or five feet above the highest flood elevation and is subject to flooding 20 points shall be assessed.

(d) For each well fitted with a pitless adaptor that does not maintain a water tight seal throughout shall be assessed 50 points.

(e) For each wellhead that is not properly secured 20 points shall be assessed.

(f) For each well that is equipped with a pump to waste line that does not discharge though an approved air gap shall be assessed 20 points.

(g) For each well that is equipped with a pump to waste line that is not properly screened shall be assessed 5 points.

(h) For each well that is equipped with a pump to waste line that discharges to a receptacle without local authorization shall be assessed 2 points.

(i) For each well that does not have a means to measure drawdown 1 point shall be assessed.

(j) For each well casing vent which is not properly covered with a No. 14 mesh screen 2 points shall be assessed.

(k) For each well casing vent which is not properly turned down 2 points shall be assessed.

(l) For each well casing vent which does not discharge through a proper air gap 2 points shall be assessed.

(m) For each well which has discharge piping that is not properly equipped with 1) a smooth nosed sampling tap 2) check valve 3) pressure gauge 4) means of measuring flow and 5) shutoff valve 1 point shall be assessed for each component not present.

(n) For each well where there is no means to release trapped air from the discharge piping 6 points shall be assessed.

(o) For each well house which does not have a drain-to-daylight installed 5 points shall be assessed.

(p) For each well which has a cross connection present in the discharge piping 5 points shall be assessed.

(q) For each well which has discharge piping equipped with an air vacuum relief valve which is not screened 2 points shall be assessed.

(r) For each well which has discharge piping equipped with an air vacuum relief valve which is not properly turned down 2 points shall be assessed.

(s) For each well which has discharge piping equipped with an air vacuum relief valve which does not discharge through an approved air gap 2 points shall be assessed.

(t) For each well which has rotating and electrical equipment that is not provided with protective guards 2 points shall be assessed.

(4) Spring Sources:

(a) For each spring source which allows surface water to stand or pond upon the spring collection area (within 50 feet from collection devices) 10 or 20 points shall be assessed. The number of points shall be based upon the size and extent of the ponding; the possible source (rainfall or incomplete collection); or the presence of moss or other indicators of long term presence of standing water.

(b) For each spring area which does not have a minimum of ten feet of relative impervious soil or an acceptable liner 10 points shall be assessed.

(c) For each spring area that has deep rooted vegetation within the fenced collection area 10 points shall be assessed.

(d) For each spring area that has deep rooted vegetation interfering with the spring collection 10 points shall be assessed.

(e) For each spring with a spring collection/junction box which does not have a proper shoebox lid shall be assessed 5 points.

(f) For each spring with a spring collection/junction box which does not have a proper gasket on the lid shall be assessed 5 points.

(g) For each spring with a spring collection/junction box which lacks an adequate air vent 5 points shall be assessed.

(h) For each spring with a spring collection/junction box with a vent that is not properly screened shall be assessed 2 points.

(i) For each spring with a spring collection/junction box with a vent that is not properly down turned shall be assessed 2 points.

(j) For each spring with a spring collection/junction box with a vent that is not properly air gapped shall be assessed 2 points.

(k) For each spring with a spring collection/junction box that lacks a raised access entry shall be assessed 5 points.

(l) For each spring with a spring collection/junction box which is not secured against unauthorized access shall be assessed 20 points.

(m) For each spring collection area without a proper fence (unless the spring is located in a remote area where no grazing or public access is possible as specified in R309-515-7(7)(e) 10 points shall be assessed.

(n) For each spring collection area that does not have a diversion channel capable of diverting surface water away from the collection area 5 points shall be assessed.

(o) For each spring system which does not have a permanent flow measuring device 5 points shall be assessed.

(p) For each spring area with an overflow/drain that is not properly screened with a No. 4 mesh screen 5 points shall be assessed.

(q) For each spring collection/junction box that does not

have adequate freefall (12 to 24 inches) between the drain invert and the surrounding ground 5 points shall be assessed.

(r) For each spring collection/junction box that has any unsealed opening(s) 50 points shall be assessed.

(5) Pump Stations.

(a) For a pumping facility which does not have a positive-acting check valve between the pump and the isolation valve 1 point shall be assessed. R309-540-5(6)(a).

(b) For a pumping facility which does not have a standard pressure gauge on the discharge line 1 point shall be assessed. R309-540-5(6)(c)(i).

(c) For a pumping facility which does not have a flow measuring device on the discharge piping 1 point shall be assessed. R309-540-5(6)(c)(iii).

(d) For a pumping facility which does not have isolation valve(s) on the discharge piping 1 point shall be assessed. R309-540-5(6)(a).

(e) For a pumping facility which does not have isolation valve(s) on the suction side of each pump 1 point shall be assessed. R309-540-5(6)(a).

(f) For a pumping facility without adequate drainage 5 points shall be assessed. R309-540-5(2)(a) (v) and (vi).

(g) For a pumping facility where the discharge line from the air release valve is not properly screened with number 14 non-corrodible mesh screen 2 points shall be assessed. R309-550-6(6)(a).

(h) For a pumping facility where the discharge line from the air release valve is not properly air gapped 2 points shall be assessed. R309-550-6(6)(a).

(i) For a pumping facility where the discharge line from the air release valve is not properly down-turned 2 points shall be assessed. R309-550-6(6)(a).

(j) For a pumping facility where the building and equipment is not protected from flooding 5 points shall be assessed. R309-540-5(2)(a)(ii), (iii) and (iv).

(k) For a pumping facility where there is inadequate heating, lighting or ventilation 5 points shall be assessed. R309-540-5(2)(e), (f) and (g).

(l) For a pumping facility where there are cross connections present 5 points shall be assessed. R309-540-5(2)(h).

(m) For a pumping facility which does not have at least two equal and functioning pumping units 20 points shall be assessed. R309-540-5(4)(b).

(n) For a pumping facility which cannot meet the demand when the largest pumping unit is out of service 20 points shall be assessed. R309-540-5(4)(b).

(o) For a pumping facility which utilizes oil lubrication not suitable for human consumption 25 points shall be assessed. R309-105-10(7).

(p) For a pumping facility which does not have protective guards on rotating and electrical equipment 2 points shall be assessed. R309-545-19(1).

(q) For a pumping facility which does not have an air release valve or other means to release trapped air located on the pump discharge piping 6 points shall be assessed. R309-515-6(12)(e)(v).

(r) For a pumping facility which is not secured against unauthorized access shall be assessed 20 points.

(6) Hydropneumatic pressure tanks.

(a) For a pressure tank without at least two pumping units 20 points shall be assessed. R309-540-6(5).

(b) For a pressure tank without a bypass piping to permit operation of the system while it is being repaired or painted 2 points shall be assessed. R309-540-6(4).

(c) For a pressure tank which lacks a 24 inch access manhole where applicable 1 point shall be assessed. R309-540-6(6).

(d) For a pressure tank which lacks a drain 1 point shall be assessed. R309-540-6(6).

(e) For a pressure tank which lacks a pressure gauge 1 point shall be assessed. R309-540-6(6).

(f) For a pressure tank which lacks a water sight glass where applicable 1 point shall be assessed. R309-540-6(6).

(g) For a pressure tank which lacks automatic or manual air blow-off 1 point shall be assessed. R309-540-6(6).

(h) For a pressure tank which lacks a means to add air 1 point shall be assessed. R309-540-6(6).

(i) For a pressure tank which lacks pressure operated start-stop controls for the pump(s) 1 point shall be assessed. R309-540-6(6).

(j) For a pressure tank with a pump cycle that cycles more frequently than once every 4 minutes 5 points shall be assessed. R309-540-6(5).

(k) For a pressure tank and controls that are not secured against unauthorized access 20 points shall be assessed. R309-545-14(3).

(7) Storage:

(a) A water system with an uncovered finished water storage reservoir shall immediately be assessed a rating of not approved.

(b) For each storage reservoir cover that is not sloped so water will drain 10 points shall be assessed.

(c) For each storage reservoir that does not have an access opening 9 points shall be assessed.

(d) For each storage reservoir access that does not have a shoebox type lid with a minimum of a 2 inch overlap 3 points shall be assessed.

(e) For each storage reservoir access that lacks a proper gasket 3 points shall be assessed.

(f) For each storage reservoir access that lacks a minimum rise of 4 inches above the tank roof (18 inches above an earthen cover) 3 points shall be assessed.

(g) For each storage reservoir that is not vented 6 points shall be assessed.

(h) For each storage reservoir vent that is not turned down or covered from rain and dust 2 points shall be assessed.

(i) For each storage reservoir vent that does not terminate a minimum of 24 to 36 inches above the surface of the storage tank roof 2 points shall be assessed.

(j) For each storage reservoir vent that is not screened with number 14 non-corrodible mesh screen with a larger guage protection screen 2 points shall be assessed.

(k) For each storage reservoir that lacks a overflow 15 points shall be assessed.

(l) For each storage reservoir overflow that does not terminated 12 to 24 inches above the ground 5 points shall be assessed.

(m) For each storage reservoir overflow that is not screened with number 4 non-corrodible mesh screen 5 points shall be assessed.

(n) For each storage reservoir overflow that is connected to a sewer without an appropriate air gap 5 points shall be assessed.

(o) For each storage reservoir with a drain that is not properly screened 5 points shall be assessed.

(p) For each storage reservoir with a drain that does not discharge through a physical airgap of at least 2 pipe diameters 5 points shall be assessed.

(q) For each storage reservoir with inadequate or improper means of site drainage 5 points shall be assessed.

(r) For each storage reservoir with any unsealed roof penetrations 50 points shall be assessed.

(s) For each storage reservoir where the roof and sidewalls are not water tight shall be assessed 10 to 50 points based upon the size and number of cracks, the loss of structural integrity and the access of contamination to the drinking water.

(t) For each storage reservoir without an access ladder,

ladder guards, balcony railings or safely located entrance hatches 2 points shall be assessed.

(u) For each storage reservoir with internal coatings not in compliance with ANSI/NSF standard 61 30 points shall be assessed.

(v) For a storage facility which is not secured against unauthorized access shall be assessed 20 points.

(8) Distribution System:

(a) A water system which fails to provide at least the water pressure as required in R309-105-9 at all times and at all locations within the distribution system shall be assessed 50 points.

(b) A water system using unapproved pipe and materials shall be assessed 30 points.

(c) A water system with pipelines installed improperly without adequate clearance or separation from sewer lines shall be assessed 30 points.

(d) A new water system constructed after January 1, 2007 or an existing water system modification without adequate pressure as defined in R309-105-9(2) shall be assessed 50 points.

(e) A water system which has a distribution line that crosses under a surface water body without adequate protection as outlined in R309-550-8(8)(b) shall be assessed 50 points.

(f) A water system which has distribution system flushing devices which are directly connected to a sewer or do not have a proper air gap shall be assessed 20 points.

(g) A water system that does not properly follow the AWWA disinfection standards as adopted in R309-105-10(2) and (3) shall be assessed 10 points.

(h) A water system that is required to provide fire protection or supplies fire hydrants with water mains that are less than 8 inched in diameter shall be assessed 5 points. These points will only be assessed for water mains installed after 1995.

(i) For each air vacuum release valve which is not properly screened and turned down 10 points shall be assessed.

(j) For each air vacuum release valve where the discharge piping does not extend a proper distance above the ground and flood level 10 points shall be assessed.

(k) For each air vacuum release valve chamber without a drain or adequate sump 30 points shall be assessed.

(l) For each air vacuum release valve chamber which shows evidence of flooding 30 points shall be assessed.

(m) For each air vacuum release valve chamber which is flooded at the time of inspection 50 points shall be assessed.

(9) Quantity requirements

(a) A water system which does not have sufficient source capacity to meet peak daily and average yearly flow requirements shall be assessed from 10 to 50 points. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages or low pressure.

(b) A water system which does not have sufficient storage capacity to meet average daily flow requirements shall be assessed from 10 to 50 points. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages.

R309-400-7. Treatment Processes.

(1) General Treatment.

(a) For a treatment facility with chemical feeders and pumps that operate at lower than 20 percent of the feed range 2 points shall be assessed. R309-525-11(7)(a)(viii).

(b) For a treatment facility without anti-siphon control to assure that liquid chemical solutions cannot be siphoned through solution feeders into the process units as required in R309-525-11(9)(c) 2 points shall be assessed. R309-525-11(9)(b)(ii).

(c) For a treatment facility with a process tank that is not properly labeled to designate the chemical contained 2 points shall be assessed. R309-525-11(8)(c)(vii).

(d) For a treatment facility with chemicals not stored in covered or unopened shipping containers, unless the chemical is transferred into a covered storage unit, 2 points shall be assessed. R309-525-11(6)(a)(iii).

(e) For a treatment facility with no cross connection control provided to assure that no direct connections exist 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, 2 points shall be assessed. R309-525-11(9)(b)(iii).

(f) For a treatment facility with no spare parts available for all feeders to replace parts which are subject to wear and damage 2 points shall be assessed. R309-525-11(7)(b)(v).

(g) For a treatment facility with chemical feed rates not proportional to flows 10 points shall be assessed. R309-525-11(7)(d)(ii).

(h) For a treatment facility with liquid chemical feeders without anti-siphon protection in each feed pump 2 points shall be assessed. R309-525-11(9)(c). Tg12

(i) For a treatment facility with feed lines not protected against freezing 2 points shall be assessed. R309-525-11(8)(d)(i)(C).

(j) For a treatment facility with feed lines not made of durable, corrosion resistant material 2 points shall be assessed. R309-525-11(8)(d)(i)(A).

(k) For a treatment facility with any chemical not conducted from the feeder to the point of application in a separate conduit 2 points shall be assessed. R309-525-11(7)(a)(v).

(l) For a treatment facility where incompatible chemicals are fed, stored or handled together 2 points shall be assessed. R309-525-11(7)(a)(iv).

(m) For a treatment facility where daily operating records do not reflect chemical dosages and total quantities used 2 points shall be assessed. R309-105-14(2)(a).

(n) For a water system that fails to maintain and properly calibrate all instrumentation needed to verify the treatment process 2 points shall be assessed. R309-525-25(4).

(o) For a treatment facility without the means to accurately measure the quantities of chemicals used 2 points shall be assessed. R309-525-11(7)(a)(i).

(p) A water system that does not keep acids and caustics in closed corrosion-resistant shipping containers or storage units 2 points shall be assessed. R309-525-11(11)(a)(i).

(q) For a treatment facility that does not have the vent hose from the feeder to discharge to the outside atmosphere above grade or have the end covered with #14 non-corrodible mesh screen 2 points shall be assessed. R309-520-10(2)(f).

(r) For a treatment facility that uses any chemical that is added to water being treated for use in a public water system for human consumption that does not comply with ANSI/NSF Standard 60 25 points shall be assessed. R309-525-11(5).

(s) For a treatment facility that does not have a finished water sampling tap(s) 2 points shall be assessed. R309-525-18.

(t) For a treatment facility that is not performing adequate process control testing consistent with the specific treatment process 30 points shall be assessed. R309-525-19.

(u) For a surface water treatment facility that does not have continuous residual disinfection equipment to measure continuously measure the residual in mg/L entering the distribution system 20 points shall be assessed. R309-215-10(1).

(v) For a treatment facility without provisions for measuring quantities of chemical used to prepare feed solutions 50 points shall be assessed. R309-525-11(6)(b)(iii).

(w) For a treatment facility without provisions for

disposing of empty bags, drums or barrels by an acceptable procedure which will minimize operator exposure to dusts 2 points shall be assessed. R309-525-11(6)(b)(ii).

(x) For a treatment facility which does not provide cross connection control on the make-up waterlines discharging to solution tanks 5 points shall be assessed. R309-525-11(9)(c)(i).

(y) For a treatment facility with overflow pipes that do not have a free fall discharge or are not located where noticeable, 2 points shall be assessed. R309-525-11(8)(b)(v)(A).

(z) For a treatment facility with subsurface locations for solution tanks that are not free from sources of possible contamination 2 points shall be assessed. R309-525-11(8)(b)(iv)(A).

(z1) For a treatment facility with subsurface locations for solution tanks that do not assure positive drainage for ground waters, accumulated water, chemical spills and overflows 2 points shall be assessed. R309-525-11(8)(b)(iv)(B).

(z2) For a treatment facility with a motor driven transfer pump that is not provided a liquid level limit switch and an overflow from the day tank, which will drain by gravity back into the bulk storage tank 10 points shall be assessed. R309-525-11(8)(c)(v).

(z3) For a treatment facility without adequate spill containment provisions 2 points shall be assessed. R309-525-11(6)(a)(iv)(B)(v).

(z4) For a treatment facility with acid storage tanks that are not vented to the outside atmosphere with separate screened vents 2 points shall be assessed. R309-525-11(8)(b)(vi).

(z5) For a treatment facility without a means to measure the solution level in the tank 2 points shall be assessed. R309-525-11(8)(b)(ii).

(z6) For a treatment facility without provisions for the proper disposal of water treatment plant waste (such as sanitary, laboratory, sludge, and filter backwash water) 5 points shall be assessed. R309-525-23.

(z7) For a treatment facility that does not use of either a volumetric or gravimetric chemical feeder for dry chemicals 2 points shall be assessed. R309-525-11(7)(c)(i).

(z8) For a disinfection facility where cross connection control is not provided on the feed lines to the solution tanks 10 points shall be assessed. R309-520-10(1)(h).

(z9) For a treatment facility that does not have a means to measure water flow rate 10 points shall be assessed.

(z10) For a treatment facility where feed lines are not labeled and color coded for identification 2 points shall be assessed. R309-525-8.

(z11) For a treatment facility which is not secured against unauthorized access shall be assessed 20 points.

(2) Disinfection.

(a) For a disinfection facility without an automatic switch over of chlorine cylinders to assure continuous disinfection 2 points shall be assessed. R309-520-10(2)(a).

(b) For a disinfection facility without scales for weighing cylinders 2 points shall be assessed. R309-520-10(2)(k).

(c) For a disinfection facility without a leak repair kit for 1 ton cylinders 15 points shall be assessed. R309-520-10(2)(p).

(d) For a disinfection facility without respiratory equipment available and stored at a convenient location 5 points shall be assessed. R309-520-10(2)(o).

(e) For a disinfection facility where the chlorine gas feed and storage area is not enclosed and separated from other operating areas 2 points shall be assessed. R309-520-10(2)(i).

(f) For a disinfection facility which is not heated, lighted or ventilated as necessary to assure proper operation or the equipment and serviceability 2 points shall be assessed. R309-520-10(1)(l).

(g) For a disinfection facility where the chlorination equipment rooms are not vented such that 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 5 points shall be assessed. R309-520-10(2)(e) (ii).

(h) For a disinfection facility where the chlorination equipment rooms are not vented such that air inlets are through louvers near the ceiling 2 points shall be assessed. R309-520-10(2)(e) (iii).

(i) For a disinfection facility where the chlorination equipment rooms are not vented such that louvers for chlorine room air intake and exhaust facilitate airtight closure 2 points shall be assessed. R309-520-10(2)(e) (iv).

(j) For a disinfection facility where the chlorination equipment rooms are not vented such that separate switches for the fans and lights are outside of the room, at the entrance to the chlorination equipment room and protected from vandalism 2 points shall be assessed. R309-520-10(2)(e) (iv).

(k) For a disinfection facility where the vent hose from the feeder to discharge to the outside atmosphere is not above grade or does not have the end covered with #14 non-corrodible mesh screen 2 points shall be assessed. R309-520-10(2)(f).

(l) For a disinfection facility without a bottle of ammonium hydroxide (56%) shall be available for leak detection 2 points shall be assessed. R309-520-10(2)(p).

(m) For a disinfection facility without full and empty cylinders of chlorine gas restrained in position to prevent upset 2 points shall be assessed. R309-520-10(2)(i).

(n) For a disinfection facility with full and empty cylinders of chlorine gas stored in rooms not separated from ammonia storage 2 points shall be assessed. R309-520-10(2)(i).

(o) For a disinfection facility with full and empty cylinders of chlorine gas stored in areas in direct sunlight or exposed to excessive heat 2 points shall be assessed. R309-520-10(2)(i).

(p) For a disinfection facility where the chlorine room is constructed in a manner that any openings between the chlorine room and the remainder of the plant are not sealed 2 points shall be assessed. R309-520-10(2)(h)(ii).

(q) For a disinfection facility utilizing 1 ton cylinders without a means of leak detection available 15 points shall be assessed. R309-520-10(2)(p).

(r) For a disinfection facility without pressure gauges on the inlet and outlets of each chlorine injector 2 points shall be assessed. R309-520-10(2)(b).

(s) For a disinfection facility without cross connection control on the solution feeders into the process units as required in R309-525-11(9)(c) 5 points shall assessed. R309-525-11(9)(b)(ii).

(t) For a disinfection facility where there is no standby disinfection equipment of sufficient capacity available to replace the largest unit 10 points shall be assessed. R309-520-10(1)(k).

(u) For a disinfection facility where a leak detector is provided and not equipped with both an audible alarm and a warning light 5 points shall be assessed. R309-520-10(2)(p).

(v) For a disinfection facility where the correct reagent is not used for testing free disinfectant residual 2 points shall be assessed. R309-520-15(3).

(w) For a disinfection facility where hypochlorite liquid feeders are not a positive displacement type 10 points shall be assessed. R309-520-10(1)(b).

(x) For a treatment facility where the pre- and post-chlorination systems are not independent to prevent possible siphoning of partially treated water into the clear well 50 points shall be assessed. R309-525-11(9)(b)(iv).

(y) For a disinfection facility where each tank is not provided with a valved drain or protected against backflow in accordance with R309-11(10)(b) and (c) 2 points shall be assessed. R309-525-11(8)(b)(vii).

(z) For a disinfection facility where overflow pipes are not located where they can be readily monitored 2 points shall be assessed. R309-520-10(1)(g).

(z1) For a disinfection facility where storage and day tanks are not provided with separate vents that terminate to the outside atmosphere 2 points shall be assessed. R309-525-11(8)(b)(vi).

(z2) For a disinfection facility where a means consistent with the nature of the chemical solution is not provided in a day tank to maintain a uniform strength of solution 2 points shall be assessed. R309-525-11(d)(8)(c)(iv).

(z3) For a disinfection facility where any chemical is not conducted from the feeder to the point of application in separate conduit 2 points shall be assessed. R309-525-11(7)(a)(v).

(z4) For a disinfection facility where chemical solution tanks are not kept covered 2 points shall be assessed. R309-525-11(8)(b)(iii).

(z5) For a disinfection facility without disinfectant residual test equipment 2 points shall be assessed. R309-520-10(1)(j).

(z6) For a disinfection facility where there is no means to measure the volume of water treated 2 points shall be assessed. R309-520-10(1)(i).

(z7) For a disinfection facility where provisions are not made for proper storage of sodium chlorite to eliminate any danger of explosion 2 points shall be assessed. R309-525-11(11) (b)(i).

(z8) For a disinfection facility where sodium chlorite is not stored by itself in a separate room and away from organic materials which would react violently with sodium chlorite 2 points shall be assessed. R309-525-11(11) (b)(i)(A).

(z9) For a disinfection facility where sodium chlorite storage structures are not constructed of noncombustible materials 2 points shall be assessed. R309-525-11(11)(a)(b)(i)(B).

(z10) For a disinfection facility where sodium chlorite storage structure is not located in an area where a fire may occur, water should be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions 2 points shall be assessed. R309-525-11(11) (b)(i)(C).

(3) Fluoridation.

(a) For a fluoridation facility that does not calculate fluoride concentrations, including chemical dosages and total water quantities, daily 2 points shall be assessed. R309-105-14(2)(a).

(b) For a fluoridation facility where there is not a fail-safe device incorporated in the fluoride feed control system to prevent overfeeding fluoride 30 points shall be assessed. R309-535-5(3).

(c) For a fluoridation facility that uses sodium fluoride, sodium silicofluoride and fluoriosilicic acid that does not conform to the applicable AWWA standards or with ANSI/NSF Standard 60 25 points shall be assessed. R309-535-5.

(d) For a fluoridation facility where liquid chemical storage tanks are not equipped with an inverted "J" air vent 2 points shall be assessed. R309-525-11(6)(a)(iv)(c).

(e) For a fluoridation facility where the make-up water is not properly treated for hardness 2 points shall be assessed. R309-535-5(2)(i).

(f) For a fluoridation facility with no provisions for the proper disposal of water treatment plant waste (such as sanitary, laboratory, sludge, and filter backwash water) 5 points shall be assessed. R309-525-23.

(g) For a fluoridation facility without a spring opposed diaphragm type anti-siphon device shall be provided for all fluoride feed lines and dilution water lines 10 points shall be assessed. R309-535-5(2)(f).

(h) For a fluoridation facility with saturators that do not have a flowmeter on the inlet or outlet line 2 points shall be assessed. R309-535-5(2)(l).

(i) For a fluoridation facility without an adequate level of fluoride crystals in the saturator 2 points shall be assessed. R309-525-11(d)(8)(b)(i).

(j) For a fluoridation facility without NIOSH/MSHA certified dust respirator approved for fluoride dust removal as required in R309-525-11(10) for operators handling fluoride compounds 2 points shall be assessed. R309-535-5(4).

(k) For a fluoridation facility without scales, loss-of-weight recorders or liquid level indicators, as appropriate, 2 points shall be assessed. R309-535-5(2)(a).

(l) For a fluoridation facility without deluge showers and eye wash devices 2 points shall be assessed. R309-535-5(4).

(m) For a fluoridation facility without proper personal protective equipment as required in R309-525-11(10) for operators handling fluoride compounds 2 points shall be assessed. R309-535-5(4).

(n) For a fluoridation facility where an overflow from the day tank will not drain by gravity back into the bulk storage tank or a containment system 10 points shall be assessed. R309-525-11(8)(c)(v).

(o) For a fluoridation facility where the saturators are not of the up-flow type 2 points shall be assessed. R309-535-5(2)(l).

(4) Activated Carbon.

(a) For a treatment facility that does not periodically check media depth against design standards 10 points shall be assessed. R309-525-19.

(b) For a treatment facility that does not have a standard operating practice for the backwash procedure 10 points shall be assessed. R309-525-19.

(c) For a treatment facility that does not provide cross connection control for the in-plant water supply 2 points shall be assessed. R309-525-11(9)(b).

(d) For a treatment facility where the output of any chemical pump is inadequate to supply the required dose rate 2 points shall be assessed. R309-525-11(7)(a)(i).

(e) For a treatment facility where the in plant water supply is inadequate in pressure and quantity 2 points shall be assessed. R309-525-11(9)(a).

(f) For a treatment facility where the vents from feeders, storage facilities and equipment exhaust does not discharge to the outside atmosphere above grade and does not have the end covered with #14 non-corrodible mesh screen 2 points shall be assessed. R309-520-10(2)(f).

(5) Filtration Treatment.

(a) For a filtration facility that does not have equipment for each individual filter to continuously monitor the effluent turbidity 30 points shall be assessed.

(b) For a filtration facility that does not provide a minimum backwash rate of 15 gpm/sf for conventional filters 50 points shall be assessed.

(c) For a filtration facility that does not have the ability to filter to waste (to allow a filter to ripen before introduction finished water into the clearwell) 50 points shall be assessed.

R309-400-8. Operator Certification.

(1) A water system that is required to have a certified operator and does not shall be assessed 30 points.

(2) A water system where the operator is not certified at the appropriate level shall be assessed 10 points.

(3) A grade 3 or 4 water system that does not have all direct responsible charge operators (as specified in R309-300-5(5)) certified at the level of the system shall be assessed 5 to 15 points. The number of points shall be based on the percentage of time that the water system is operated by operators not certified at the required level.

(4) A water system where the certified operator does not live within a one hour response time shall be assessed 20 points.

(5) A water system may be credited up to a maximum of 20 points which shall remain on record for as long as the conditions apply. The following items are eligible for credit:

(a) A water system that is not required to have a certified

operator and does shall be credited 10 points.

(b) A water system that has operators that are certified at a higher level than required shall be credited 10 points.

(c) A water system that has operators certified in other areas that are not required by that water system, such as treatment or backflow prevention certification, shall be credited 10 points.

R309-400-9. Cross Connection Control Program.

(1) A water system which does not have any of the below listed components of a cross connection control program in place shall be assessed 50 points.

(2) A water system which only has some of the components of a cross connection control program in place shall be assessed the following number of points:

(a) A water system which does not have local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy) shall be assessed 10 points.

(b) A water system that does not provided public education or awareness material or presentations on an annual basis shall be assessed 10 points.

(c) A water system that does not have an operator with training in the area of cross connection control or backflow prevention shall be assessed 10 points.

(d) A water system with no written records of cross connection control activities, such as, backflow assembly inventory and test history, shall be assessed 10 points.

(e) A water system that does not have on-going enforcement activities (hazard assessments and enforcement actions) shall be assessed 10 points.

R309-400-10. Drinking Water Source Protection.

Drinking water source protection (for ground water and surface water sources): Points shall be assessed for each source after a system fails to complete source protection plans as specified in R309-600 and R309-605. The points shall remain until such time as the violation or deficiency no longer exists.

(1) For a water system which has not appointed a designated person for source protection and notified the Division 5 points shall be assessed.

(2) For a water system which does not maintain a current copy of their source protection plan(s) or source assessment(s) on the water system premises 30 points shall be assessed.

(3) For a water system which does not maintain a current inventory of potential contamination sources or susceptibility analysis and determination 10 points shall be assessed.

(4) For a water system which does not maintain current records of land management strategies (such as, ordinances, codes, permits, public education programs, meeting minutes) 10 points shall be assessed.

(5) For a water system with any new sources for which a Preliminary Evaluation Report has not been submitted 150 points shall be assessed. These points shall be included with the points for an unapproved source, not in addition to.

(6) For a water system which has any old sources that have come into use for which a source protection plan has not been submitted 30 points shall be assessed.

(7) For a water system which has reconstructed or redeveloped a water source and has not submitted a revised source protection plan 20 points shall be assessed.

R309-400-11. Administrative Issues.

Points in this area shall be assessed at the time that the failure occurs or upon notification of the Director and shall remain until the issue is resolved unless otherwise specified.

(1) Administrative Data -

(a) A water system which has not designated a person or organizational official responsible for the system including a current address and phone number shall be assessed 10 points.

(b) A water system project constructed without proper plan approval shall be assessed 1 to 50 points based on an evaluation of the project which shall include the structural or engineering integrity of the project; whether the plans and specifications were prepared and stamped by a licensed professional engineer; the adequacy of the materials used and the impact on the operation of the water system (good or bad). The points assessed shall remain on record for a period of one year.

(2) A water system with a current written Emergency Response Program shall be credited 10 points that shall remain on record as long as the Program remains current.

(3) A water system with a written Financial Management Plan including an appropriate rate structure, infra-structure replacement fund, and master plan shall be credited 10 points that shall remain on record as long as the Plan is current.

(4) Sampling Site Plans:

(a) A water system which does not have an adequate bacteriological sampling site plan shall be assessed 5 points.

(b) A water system which does not have a lead/copper sampling site plan shall be assessed 10 points.

(5) Customer Complaint:

(a) 1 to 100 points may be assessed for valid and documented customer complaints. The customer complaints include but are not limited to the following:

(i) Turbidity;

(ii) Pressure;

(iii) Taste and Odor;

(iv) Sickness (water suspected); and

(v) Waterborne Disease Outbreak (R309-104-9).

(vi) Periods of Water Outage

(b) The number of points shall be based upon the extent and documentation of the problem and the potential impact to public health. The documentation shall consist of an investigation by Department of Environmental Quality, Department of Health or Local Health Department personnel and may include an epidemiological study linking the drinking water to reported outbreaks of illness where appropriate.

(c) In the case of a documented waterborne disease outbreak the water system shall automatically be rated Not Approved for at least the duration of the threat to the quality of the drinking water and as long as it takes the water system to correct any deficiency that caused the outbreak.

(d) Points shall only be assessed once per issue and shall not be additive based on the number of calls per issue. These points shall be assessed and updated upon verification of the complaint by the Director and shall remain on record until the issue or deficiency no longer exists. Points may have already been assessed in other areas as appropriate.

(6)(a) The Director may issue directives to a water system that include but are not limited to the following:

(i) Administrative Orders;

(ii) Rule defined action;

(iii) Rule defined compliance schedule;

(iv) Variance/Exemption requirements; and

(v) Bilateral Compliance Agreement.

(b) If the water system does not comply with the directive, the Director may assess 1 to 100 points to the water system. Points shall be assessed based upon the severity of the non-compliance, the threat to public health and the underlying basis for the original directive.

(7) Data Falsification - The Director may assess a water system points for data falsification. The water system may be assessed 1 to 50 points for each occurrence based upon:

(a) the severity of the falsification;

(b) the threat to public health;

(c) the intent of the water system personnel; and

(d) the type of falsification.

(i) Reports only good data

(ii) Doctored results from the laboratory

(iii) Non-valid sample

Data reported to the Director includes but is not limited to Water Treatment Plant Reports, Disinfection Reports, bacteriological and chemical analyses, and Annual Reports. This assessment of points shall be in addition to any other penalty provided by law.

(8) Water Hauling:

(a) For a community water system that is hauling water as a permanent method of culinary water distribution 150 points shall be assessed.

(b) For a non-community system that is hauling water as a permanent method of culinary water distribution when there is alternate means of supplying quality drinking water 150 points shall be assessed.

(c) For a water system which has been granted an exception to haul water, if any part of the water hauling guidelines are not followed 50 points shall be assessed.

R309-400-12. Reporting and Record Maintenance Issues.

Points may be assessed for failure to provide required reports to the Director by the reporting deadline. The points shall be assigned as the failure occurs and shall remain on record for a period of one year.

(1) Monthly Reports:

(a) For each failure to report the monthly water treatment plant report 10 points shall be assessed.

(2) Quarterly Repots:

(a) For each failure to report the quarterly disinfection report 10 points shall be assessed.

(3) Annual Reports:

(a) For failure to provide the annual report 2 points shall be assessed.

(b) For a community water system that fails to prepare or distribute a consumer confidence report as required in R309-225 2 points shall be assessed.

KEY: drinking water, environmental protection, water system rating, penalties
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R309. Environmental Quality, Drinking Water.
R309-405. Compliance and Enforcement: Administrative Penalty.
R309-405-1. Authority.

Utah Code Annotated, Sections 19-4-104 and 19-4-109

R309-405-2. Purpose, Scope, and Applicability.

(1) This rule sets the criteria and procedures the Director will use in assessing penalties to public drinking water systems for violation of its rules.

(2) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result with the intent of returning a public water system to compliance.

(3) This rule is applicable to all public drinking water systems.

R309-405-3. Limits on Authority and Liability.

Nothing in this rule should be construed to limit the Director's ability to take enforcement actions under Utah Code Annotated, Section 19-4-109.

R309-405-4. Assessment of a Penalty and Calculation of Settlement Amounts.

(1) Where the Director determines that a penalty may be appropriate, the Director shall propose a penalty amount by sending a notice of agency action to the public water system. The notice of agency action shall provide that the public water system may submit comments and/or information on the proposed penalty to the Director within 30 days. The criteria the Director will use in establishing a proposed penalty amount shall be as follows:

(a) Major Violations: $600 to $1000 per day for each day of violation. This category includes violations with high potential for impact on drinking water users, major deviations from the requirements of the rules or Safe Drinking Water Act, intentional fraud, falsification of data, violations which result in a public water system being considered by the Environmental Protection Agency to be: "Significant Non-Compliers" (SNC), or violations that may have a substantial adverse effect on the regulatory program. Specific violations that are subject to a major violation category can include the following:

(i) Violations subject to $1000 per day penalty:

(A) Any violation defined by R309-220-5 which would trigger a Tier 1 public notification.

(B) Not having any elements of a source protection plan as required in R309-600 for ground water sources and R309-605 for surface water sources.

(C) Failure to respond to an Administrative Order issued by the Director.

(D) Introduction by the water system of a source water that has not been evaluated and approved for use as a public drinking water source under R309-515.

(E) Construction or use of an interconnection to another public water system which has not been reviewed and approved in accordance with R309-550-9.

(F) Having over 20 IPS points (Improvement Priority System points based on R309-400, the Water System Rating Criteria) specifically for operating pressures below that required by R309-105-9.

(G) Having 50 IPS points specifically for an inadequate well seal as required in R309-515.

(H) Having over 50 IPS points (not including the deficiencies in (F) and (G) above) specifically assessed in the physical facility section of an IPS report.

(I) Use of a surface water source without proper filtration treatment in accordance with R309-525 or 530.

(J) Exceeding the rated water treatment plant capacity as determined by review under R309-525 or 530.

(K) Insufficient disinfection contact time as evaluated under R309-215-7.

(ii) Violations subject to $800 per day penalty:

(A) Not having any of the required components of a cross connection control program in place as required by R309-105-12.

(B) Any violation of the turbidity requirements outlined in R309-215-9(4)(b)(iii -iv) for individual filter turbidities using consecutive readings taken 15 minutes apart.

(b) Moderate Violations: $400 to $600 per day for each day of violation. This category includes violations with a moderate potential for impact on drinking water users, moderate deviations from the requirements of the rules or Safe Drinking Water Act with some requirements implemented as intended, or violations that may have a significant notable adverse effect on the regulatory program. Specific violations that are subject to a moderate violation category can include the following:

(i) Violations subject to $600 penalty:

(A) Any violation defined by R309-220-6 which would trigger a Tier 2 public notification.

(B) Having a disapproved status on a source protection plan (R309-600 and 605) for a period longer than 90 days.

(C) Installation or use of disinfection equipment that has not been evaluated and approved for use under R309-520.

(D) Having measured turbidity spikes of greater than 0.5 or 1.0 NTU in two consecutive fifteen minute readings as defined in R309-215-9(4)(b)(i) or (ii) respectively.

(E) Insufficient source capacity, storage capacity, or delivery capacity as established by review of the system design under R309-500 through 550.

(F) Not complying with plan approval requirements as set forth in R309-500. The term infrastructure can include the disinfection process, surface water treatment process, and physical facilities such as water treatment plants, storage reservoirs, sources and distribution piping.

(c) Minor Violations: Up to $400 per day for each day of violation. This category includes violations with a minor potential for impact on drinking water users, slight deviations from the rules or Act with most of the requirements implemented, or violations that may have a minor adverse effect on the regulatory program. Specific violations that are subject to a minor violation category can include the following:

(i) Violations subject to $400 per day penalty:

(A) Any violation defined by R309-220-7 which would trigger a Tier 3 public notification or a violation of the monitoring requirements of R309-515-4(5), except for turbidity monitoring for surface water treatment facilities and violations termed as minor monitoring as outlined in R309-400-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(B) Failure to upgrade a Preliminary Evaluation Report for a source protection plan as required in R309-600 and 605.

(C) Failure to update a source protection plan as required in R309-600 and 605.

(D) Construction or use of a storage reservoir that has not been evaluated for use under R309-545.

(ii) Violations subject to $200 per day penalty:

(A) Lacking individual components of a cross connection control program as required by R309-105-12.

(B) Not having a certified operator on staff as required in R309-300-5(10) after 1 year or 4 operator certification exam cycles.

(C) Any minor monitoring violation as defined by R309-400-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(D) Any violation of the turbidity requirements outlined in R309-215-9(4)(b)(i-ii) for individual filter turbidities using

consecutive readings taken 15 minutes apart.

(2) The Director will assess the penalty, if any, after reviewing information submitted by the public water system. The public water system may appeal the assessment of the penalty as provided in R305-7-302.

R309-405-5. Factors for Seeking or Negotiating Amount of Penalties.

The Director, in assessing the penalty, may take into account the following factors:

(1) Economic benefit. The costs a person or organization may save by delaying or avoiding compliance with applicable laws or rules.

(2) Gravity of the violation. This component of the calculation shall be based on:

(a) The extent of deviation from the rules;

(b) The potential for harm to drinking water users, regardless of the extent of harm that actually occurred;

(c) The degree of cooperation or noncooperation and 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;

(d) History of compliance or noncompliance. The penalty amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the penalty amount may be adjusted downward when it is shown that the violator has a good compliance record; and,

(e) Degree of willfulness or negligence. Factors to be considered include how much control the violator had over the violation 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, or should have known, of the legal requirements which were violated, and degree of recalcitrance.

(3) The number of days of non compliance

(4) Public sensitivity. The actual impact of the violation(s) that occurred.

(5) Response and investigation costs incurred by the State and others.

(6) The possible deterrent effect of a penalty to prevent future violations.

R309-405-6. Satisfaction of Penalty Under Stipulated Penalty Agreement.

The Director may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Utah Code Annotated Section 19-4-109:

(1) Payment of the penalty may be extended based on a person or organization's inability to pay. This shall be distinguished from an unwillingness to pay. In cases of financial hardship, the Director may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) In circumstances where there is a demonstrated financial hardship, the Director may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Director.

(3) In some cases, the Director may allow the violator to satisfy the penalty by completing a Supplemental Environmental Project (SEP) approved by the Director. The following criteria shall be used in determining the eligibility of such projects:

(a) The project must be in addition to all regulatory compliance obligations;

(b) The project must relate to some or all of the issues of the violation;

(c) The project must primarily benefit the drinking water users;

(d) The project must be defined, measurable and have a beginning and ending date;

(e) The project must be agreed to in writing between the public water system and the Director;

(f) The project must not generate the public perception favoring violations of the laws and rules.

R309-405-7. Penalty Policy for Civil Proceedings.

Pursuant to Utah Code Annotated Section 19-4-109(2)(b), any person who willfully violates any rule or order made or issued pursuant to the Utah Safe Drinking Water Act, Utah Code Annotated Section 19-4-101 et seq, is subject to a civil penalty of not more than $5000 per day for each day of violation. The Director shall apply the provisions of R309-405-4, 5, and 6 in pursuing or resolving willful violations except that the penalty range per day for each day of violation for major violations shall be $3000 to $5000, for moderate violations shall be $2000 to $3000, and for minor violations shall be up to $2000.

KEY: drinking water, environmental protection, penalties
October 12, 2013 19-4-104
Notice of Continuation March 22, 2010

R313. Environmental Quality, Radiation Control.
R313-21. General Licenses.
R313-21-1. Purpose and Scope.

(1) R313-21 establishes general licenses for the possession and use of radioactive material contained in certain items and a general license for ownership of radioactive material.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3)and 19-3-104(6).

R313-21-21. General Licenses--Source Material.

(1) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to use and transfer not more than 6.82 kilogram (15 lb) of source material at any one time for research, development, educational, commercial, or operational purposes. A person authorized to use or transfer source material, pursuant to this general license, may not receive more than a total of 68.2 kilogram (150 lb) of source material in any one calendar year.

(2) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in R313-21-21(1) are exempt from the provisions of R313-15 and R313-18, to the extent that such receipt, possession, use or transfer is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to a person who is also in possession of source material under a specific license issued pursuant to R313-22.

(3) Persons who receive, possess, use, or transfer source material pursuant to the general license in R313-21-21(1) are prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the Director in a specific license.

(4) A general license is hereby issued authorizing the receipt of title to source material without regard to quantity. This general license does not authorize a person to receive, possess, use, or transfer source material.

(5) Depleted uranium in industrial products and devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of R313-21-21(5)(b), (c), (d), and (e), depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(b) The general license in R313-21-21(5)(a) applies only to industrial products or devices which have been manufactured or initially transferred, either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to R313-22-75(11) or in accordance with a specific license issued to the manufacturer by the Nuclear Regulatory Commission, an Agreement State, or a Licensing State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the Nuclear Regulatory Commission, an Agreement State, or a Licensing State.

(c)(i) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by R313-21-21(5)(a) shall file form DRC-12 "Registration Form-Use of Depleted Uranium Under General License," with the Director. The form shall be submitted within 30 days after the first receipt or acquisition of depleted uranium. The registrant shall furnish on form DRC-12 the following information and other information as may be required by that form:

(A) name and address of the registrant;

(B) a statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in R313-21-21(5)(a) and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(C) name and title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in R313-21-21(5)(c)(i)(B).

(ii) The registrant possessing or using depleted uranium under the general license established by R313-21-21(5)(a) shall report in writing to the Director any changes in information previously furnished on form DRC-12 "Registration Form - Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of the change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by R313-21-21(5)(a):

(i) shall not introduce depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

(ii) shall not abandon depleted uranium;

(iii) shall transfer or dispose of depleted uranium only by transfer in accordance with the provisions of R313-19-41. In the case where the transferee receives the depleted uranium pursuant to the general license established by R313-21-21(5)(a), the transferor shall furnish the transferee a copy of R313-21 and a copy of form DRC-12. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to R313-21-21(5)(a), the transferor shall furnish the transferee a copy of this rule and a copy of form DRC-12 accompanied by a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in R313-21;

(iv) within 30 days of any transfer, shall report in writing to the Director the name and address of the person receiving the depleted uranium pursuant to the transfer;

(v) shall not export depleted uranium except in accordance with a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 110; and

(vi) shall pay annual fees pursuant to R313-70.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by R313-21-21(5)(a) is exempt from the requirements of R313-15 and R313-18 of these rules with respect to the depleted uranium covered by that general license.

R313-21-22. General Licenses*--Radioactive Material Other Than Source Material.

NOTE: *Different general licenses are issued in this section, each of which has its own specific conditions and requirements.

(1) Certain devices and equipment. A general license is hereby issued to transfer, receive, acquire, own, possess, and use radioactive material incorporated in the following devices or equipment which have been manufactured, tested and labeled by the manufacturer in accordance with a specific license issued to the manufacturer by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State for use pursuant to 10 CFR 31.3. This general license is subject to the provisions of R313-12-51 through R313-12-70, R313-14, R313-15, R313-18 and R313-19 as applicable.

(a) Static Elimination Devices. Devices designed for use as static eliminators which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 megabecquerel (500 uCi) of polonium-210 per device.

(b) Ion Generating Tube. Devices designed for ionization of air which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 megabecquerel (500 uCi) of polonium-210 per device or a total of not more than 1.85 gigabecquerel (50 mCi) of hydrogen-3

(tritium) per device.

(2) Certain items and self-luminous products containing radium-226.

(a) A general license is hereby issued to a person to acquire, receive, possess, use, or transfer, in accordance with the provisions of Subsections R313-21-22(2)(b), R313-21-22(2)(c), and R313-21-22(2)(d), radium-226 contained in the following products manufactured prior to November 30, 2007.

(i) Antiquities originally intended for use by the general public. For the purposes of Subsection R313-21-22(2)(a), antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(ii) Intact timepieces containing greater than 37 kilobecquerels (1 uCi), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces.

(iii) Luminous items installed in air, marine, or land vehicles.

(iv) All other luminous products provided that no more than 100 items are used or stored at the same location at one time.

(v) Small radium sources containing no more than 37 kilobecquerels (1 uCi) of radium-226. For the purposes of Subsection R313-21-22(2)(a), "small radium sources" means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations such as cloud chambers and spinthariscopes, electron tubes, static eliminators, or as designated by the Director.

(b) Persons who acquire, receive, possess, use, or transfer radioactive material under the general license issued in Subsection R313-21-22(2)(a) are exempt from the provisions of Rules R313-15, R313-18, and Sections R313-12-51 and R313-19-50, to the extent that the receipt, possession, use, or transfers of radioactive material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to a person specifically licensed under Rule R313-22.

(c) A person who acquires, receives, possesses, uses, or transfers radioactive material in accordance with the general license in Subsection R313-21-22(2)(a):

(i) Shall notify the Director should there be an indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the Director within 30 days.

(ii) Shall not abandon products containing radium-226. The product, and radioactive material from the product, may only be disposed of according to Section R313-15-1008 or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the Director.

(iii) Shall not export products containing radium-226 except in accordance with 10 CFR Part 110.

(iv) Shall dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with Federal or State solid or hazardous waste laws, inluding the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 under Rule R313-22 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State or as otherwise approved by the Director.

(v) Shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Director a written justification using the method stated in Section R313-12-110.

(d) The general license in R313-21-22(2)(a) does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

(3) RESERVED.

(4) Certain detecting, measuring, gauging or controlling devices and certain devices for producing light or an ionized atmosphere.*

NOTE: *Persons possessing radioactive material in devices under a general license in R313-21-22(4) before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of R313-21-22(4) in effect on January 14, 1975.

(a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, acquire, receive, possess, use or transfer, in accordance with the provisions of R313-21-22(4)(b), (c) and (d), radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b)(i) The general license in R313-21-22(4)(a) applies only to radioactive material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in:

(A) a specific license issued by the Director pursuant to R313-22-75(4); or

(B) an equivalent specific license issued by the Nuclear Regulatory Commission or an Agreement State; or

(C) An equivalent specific license issued by a State with provisions comparable to R313-22-75.*

NOTE: *Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(ii) The devices must have been received from one of the specific licensees described in R313-21-22(4)(b)(i) or through a transfer made under R313-21-22(4)(c)(ix).

(c) Any person who owns, acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license in R313-21-22(4)(a):

(i) shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by the labels;

(ii) shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at other intervals as are specified in the label; however:

(A) Devices containing only krypton need not be tested for leakage of radioactive material, and

(B) Devices containing only tritium or not more than 3.7 megabecquerel (100 uCi) of other beta, gamma, or both, emitting material or 0.37 megabecquerel (10 uCi) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;

(iii) shall assure that other testing, installation, servicing, and removal from installation involving the radioactive materials, its shielding or containment, are performed:

(A) in accordance with the instructions provided by the labels; or

(B) by a person holding a specific license pursuant to

R313-22 or from the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform such activities;

(iv) shall maintain records showing compliance with the requirements of R313-21-22(4)(c)(ii) and (iii). The records shall show the results of tests. The records also shall show the dates of performance of, and the names of persons performing, testing, installation, servicing, and removal from the installation the radioactive material and its shielding or containment. The licensee shall retain these records as follows:

(A) Each record of a test for leakage of radioactive material required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of;

(B) Each record of a test of the on-off mechanism and indicator required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of;

(C) Each record that is required by R313-21-22(4)(c)(iii) shall be retained for three years from the date of the recorded event or until the device is transferred or disposed of;

(v) shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 185 becquerel (0.005 uCi) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair the device that was issued by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device or as otherwise approved by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. A report containing a brief description of the event and the remedial action taken; and, in the case of detection of 185 becquerel (0.005 uCi) or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Director within 30 days. Under these circumstances, the criteria set out in R313-15-402 may be applicable, as determined by the Director on a case-by-case basis;

(vi) shall not abandon the device containing radioactive material;

(vii) shall not export the device containing radioactive materials except in accordance with 10 CFR 110;

(viii)(A) shall transfer or dispose of the device containing radioactive material only by export as provided by R313-21-22(4)(c)(vii), by transfer to another general licensee as authorized in R313-21-22(4)(c)(ix), to a person authorized to receive the device by a specific license issued under R313-22, to an authorized waste collector under R313-25, or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State, or a Licensing State , or as otherwise approved under R313-21-22(4)(c)(viii)(C);

(B) shall furnish a report to the Director within 30 days after transfer of a device to a specific licensee or export. The report must contain:

(I) the identification of the device by manufacturer's or initial transferor's name, model number, and serial number;

(II) the name, address, and license number of the person receiving the device, the license number is not applicable if exported; and

(III) the date of the transfer;

(C) shall obtain written approval from the Director before transferring the device to any other specific licensee not specifically identified in R313-21-22(4)(c)(viii)(A); however, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if the holder:

(I) verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(II) removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by R313-21-22(4)(c)(i)) so that the device is labeled in compliance with R313-15-904; however, the manufacturer, model number, and serial number must be retained;

(III) obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(IV) reports the transfer under R313-21-22(4)(c)(viii)(B);

(ix) shall transfer the device to another general licensee only if:

(A) the device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of R313-21-22(4), R313-12-51, R313-15-1201, and R313-15-1202, and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor shall report to the Director:

(I) the manufacturer's or initial transferor's name;

(II) the model number and serial number of the device transferred;

(III) the transferee's name and mailing address for the location of use; and

(IV) the name, title, and phone number of the responsible individual identified by the transferee in accordance with R313-21-22(4)(c)(xii) to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(B) the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;

(x) shall comply with the provisions of R313-15-1201 and R313-15-1202 for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of R313-15 and R313-18;

(xi) shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Director and provide written justification as to why it cannot comply;

(xii) shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard;

(xiii)(A) shall register, in accordance with R313-21-22(4)(c)(xiii)(B) and (C), devices containing at least 370 megabecquerel (ten mCi) of cesium-137, 3.7 megabecquerel (0.1 mCi) of strontium-90, 37 megabecquerel (one mCi) of cobalt-60, 3.7 megabecquerel (0.1 mCi) of radium-226, or 37 megabecquerel (one mCi) of americium-241 or any other transuranic, (elements with atomic number greater than uranium-92), based on the activity indicated on the label. Each address for a location of use, as described under R313-21-22(4)(c)(xiii)(C)(IV) represents a separate general licensee and requires a separate registration and fee;

(B) if in possession of a device meeting the criteria of

R313-21-22(4)(c)(xiii)(A), shall register these devices annually with the Director and shall pay the fee required by R313-70. Registration shall include verifying, correcting, or adding, as appropriate, to the information provided in a request for registration received from the Director. The registration information must be submitted to the Director within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of R313-21-22(4)(c)(xiii)(A) is subject to the bankruptcy notification requirement in R313-19-34(5) and (6);

(C) in registering devices, the general licensee shall furnish the following information and any other information specifically requested by the Director:

(I) name and mailing address of the general licensee;

(II) information about each device: the manufacturer or initial transferor, model number, serial number, the radioisotope and activity as indicated on the label;

(III) name, title, and telephone number of the responsible person designated as a representative of the general licensee under R313-21-22(4)(c)(xii);

(IV) address or location at which the device(s) are used, stored, or both. For portable devices, the address of the primary place of storage;

(V) certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information; and

(VI) certification by the responsible representative of the general licensee that they are aware of the requirements of the general license; and

(D) persons generally licensed by the Nuclear Regulatory Commission, an Agreement State, or Licensing State with respect to devices meeting the criteria in R313-21-22(4)(c)(xiii)(A) are not subject to registration requirements if the devices are used in areas subject to Division jurisdiction for a period less than 180 days in any calendar year. The Director will not request registration information from such licensees;

(xiv) shall report changes to the mailing address for the location of use, including changes in the name of a general licensee, to the Director within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage; and

(xv) may not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by R313-21-22(4)(c)(ii) need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

(d) The general license in R313-21-22(4)(a) does not authorize the manufacture or import of devices containing radioactive material.

(e) The general license provided in R313-21-22(4)(a) is subject to the provisions of R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(5) Luminous safety devices for aircraft.

(a) A general license is hereby issued to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(i) each device contains not more than 370.0 gigabecquerel (10 Ci) of tritium or 11.1 gigabecquerel (300 mCi) of promethium-147; and

(ii) each device has been manufactured, assembled or initially transferred in accordance with a specific license issued by the Nuclear Regulatory Commission or an Agreement State, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Director or an Agreement State to the manufacturer or assembler of the device pursuant to licensing requirements equivalent to those in R313-22-75(5).

(b) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to the general license in R313-21-22(5) are exempt from the requirements of R313-15 and R313-18, except that they shall comply with the provisions of R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, repair, or import of luminous safety devices containing tritium or promethium-147.

(d) This general license does not authorize the export of luminous safety devices containing tritium or promethium-147.

(e) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(f) This general license is subject to the provisions of R313-12-51 through R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(6) Ownership of radioactive material. A general license is hereby issued to own radioactive material without regard to quantity. Notwithstanding any other provisions of R313-21, this general license does not authorize the manufacture, production, transfer, receipt, possession, use, import, or export of radioactive material except as authorized in a specific license.

(7) Calibration and reference sources.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer, in the form of calibration or reference sources, americium-241, plutonium or radium-226 in accordance with the provisions of Subsections R313-21-22(7)(b) and (c), to a person who holds a specific license issued by the Director which authorizes that person to receive, possess, use and transfer radioactive material.

(b) The general license in Subsection R313-21-22(7)(a) applies only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued by the Nuclear Regulatory Commission pursuant to 10 CFR 32.57 or 10 CFR 70.39 or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Director, or an Agreement State which authorizes manufacture of the sources for distribution to persons generally licensed, or in accordance with a specific license issued by a State with requirements equivalent to 10 CFR 32.57 or 10 CFR 70.39.

(c) The general license provided in Subsection R313-21-22(7)(a) is subject to the provisions of Sections R313-12-51 through R313-12-53, R313-12-70, and Rules R313-14, R313-19-34, R313-19-41, R313-19-61, R313-19-100, R313-15 and R313-18. In addition, persons who own, receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to the general license in Subsection R313-21-22(7)(a):

(i) shall not possess at any one time, at any one location of storage or use, more than 185.0 kilobecquerel (5 uCi) of americium-241, 185.0 kilobecquerel (5 uCi) of plutonium, or 185.0 kilobecquerel (5 uCi) of radium-226 in such sources;

(ii) shall not receive, possess, use or transfer a source unless the source, or the storage container, bears a label which includes one of the following statements or a substantially similar statement which contains the information called for in the following statement:

The receipt, possession, use and transfer of this source, Model No. ....., Serial No. ....., are subject to a

general license and the regulations of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL

THIS SOURCE CONTAINS (AMERICIUM-241)(PLUTONIUM)(RADIUM-226)*

DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

.....

Typed or printed name of the manufacturer or initial transferor

NOTE: *Show the name of the appropriate material.

(iii) shall not transfer, abandon, or dispose of a source except by transfer to a person authorized by a license issued by the Director, the Nuclear Regulatory Commission, or an Agreement State to receive the source;

(iv) shall store a source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium, or radium-226 which might otherwise escape during storage; and

(v) shall not use a source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(d) A general license issued pursuant to Subsection R313-21-22(7)(a) does not authorize the manufacture, import, or export of calibration or reference sources containing americium-241, plutonium, or radium-226.

(8) RESERVED.

(9) General license for use of radioactive material for certain in vitro clinical or laboratory testing.*

NOTE: *The New Drug provisions of the Federal Food, Drug and Cosmetic Act also govern the availability and use of any specific diagnostic drug in interstate commerce.

(a) A general license is hereby issued to any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for the following stated tests, in accordance with the provisions of R313-21-22(9) (b), (c), (d), (e), and (f) the following radioactive materials in prepackaged units for use in in-vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(i) iodine-125, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(ii) iodine-131, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(iii) carbon-14, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(iv) hydrogen-3 (tritium), in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59, in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(vii) selenium-75, in units not to exceed 370.0 kilobecquerel (10 uCi) each; or

(viii) mock iodine-125, reference or calibration sources, in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 185.0 becquerel (0.005 uCi) of americium-241 each.

(b) A person shall not receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by R313-21-22(9)(a) until that person has filed form DRC-07, "Registration Form-In Vitro Testing with Radioactive Material Under General License," with the Director and received a Certificate of Registration signed by the Director, or until that person has been authorized pursuant to R313-32 to use radioactive material under the general license in R313-21-22(9). The physician, veterinarian, clinical laboratory or hospital shall furnish on form DRC-07 the following information and other information as may be required by that form:

(i) name and address of the physician, veterinarian, clinical laboratory or hospital;

(ii) the location of use; and

(iii) a statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive material as authorized under the general license in Subsection R313-21-22(9)(a) and that the tests will be performed only by personnel competent in the use of radiation measuring instruments and in the handling of the radioactive material.

(c) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by Subsection R313-21-22(9)(a) shall comply with the following:

(i) The general licensee shall not possess at any one time, pursuant to the general license in Subsection R313-21-22(9)(a) at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, iron-59, cobalt-57, or any combination, in excess of 7.4 megabecquerel (200 uCi).

(ii) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(iii) The general licensee shall use the radioactive material only for the uses authorized by Subsection R313-21-22(9)(a).

(iv) The general licensee shall not transfer the radioactive material except to a person authorized to receive it pursuant to a license issued by the Director, the Nuclear Regulatory Commission, an Agreement State or Licensing State, nor transfer the radioactive material in a manner other than in the unopened, labeled shipping container as received from the supplier.

(v) The general licensee shall dispose of the Mock Iodine-125 reference or calibration sources described in Subsection R313-21-22(9)(a)(viii) as required by Section R313-15-1001.

(vi) The general licensee shall pay annual fees pursuant to Rule R313-70.

(d) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to Subsection R313-21-22(9)(a):

(i) Except as prepackaged units which are labeled in accordance with the provision of a specific license issued pursuant to R313-22-75(7) or in accordance with the provisions of a specific license issued by the Nuclear Regulatory Commission, or an Agreement State, or before November 30, 2007, in accordance with the provisions of a specific license issued by a State with comparable provisions to 10 CFR 32.71 (2010) which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3(tritium), iron-59, selenium-75, cobalt-57, or Mock Iodine-125 to persons generally licensed under Subsection R313-21-22(9) or its equivalent, and

(ii) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

"This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians in the practice of veterinary medicine, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of

regulatory authority.

.....

Name of Manufacturer"

(e) The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license in Subsection R313-21-22(9)(a) shall report in writing to the Director, changes in the information previously furnished in the "Registration Form-In Vitro Testing with Radioactive Material Under General License", form DRC -07. The report shall be furnished within 30 days after the effective date of the change.

(f) Any person using radioactive material pursuant to the general license of Subsection R313-21-22(9)(a) is exempt from the requirements of Rules R313-15 and R313-18 with respect to radioactive material covered by that general license, except that persons using the Mock Iodine-125 described in Subsection R313-21-22(9)(a)(viii) shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and R313-15-1202.

(10) Ice Detection Devices.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 1.85 megabecquerel (50 uCi) of strontium-90 and each device has been manufactured or initially transferred in accordance with a specific license issued by the Nuclear Regulatory Commission, or each device has been manufactured in accordance with the specifications contained in a specific license issued by the Director, an Agreement State, or a Licensing State to the manufacturer of the device pursuant to licensing requirements equivalent to those in 10 CFR 32.61.

(b) Persons who own, receive, acquire, possess, use or transfer strontium-90 contained in ice detection devices pursuant to the general license in Subsection R313-21-22(10)(a):

(i) shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from over-heating to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to manufacture or service the device; or shall dispose of the device pursuant to the provisions of Section R313-15-1001;

(ii) shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon; and

(iii) are exempt from the requirements of Rules R313-15 and R313-18 except that the persons shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, disassembly, repair, or import of strontium-90 in ice detection devices.

(d) This general license is subject to the provision of Sections R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100 of these rules.

KEY: radioactive materials, general licenses, source materials
October 13, 2010 19-3-104
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R313. Environmental Quality, Radiation Control.
R313-28. Use of X-Rays in the Healing Arts.
R313-28-10. Purpose and Scope.

(1) The purpose of the rules in R313-28 is to prescribe the requirements for the use of x-rays in the healing arts.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(4) and 19-3-104(8).

R313-28-20. Definitions.

As used in R313-28, the following definitions apply:

"Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

"Actual focal spot" refer to "Focal spot."

"Aluminum equivalent" means the thickness of aluminum, type 1100 alloy, affording the same attenuation, under specified conditions, as the material in question. The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

"Assembler" means individuals engaged in the business of assembling, replacing, or installing one or more components into an x-ray system or subsystem. The term includes the owner of an x-ray system or his or her employee or agent if they assemble components into an x-ray system that is subsequently used to provide professional or commercial services.

"Attenuation block" means a block or stack, having appropriate dimensions 20 cm by 20 cm by 3.8 cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

"Automatic EXPOSURE control" means a device which automatically controls one or more technique factors in order to obtain, at a preselected location, a required quantity of radiation. Phototimer and ion chamber devices are included in this category.

"Barrier" refer to "Protective barrier".

"Beam axis" means a line from the source through the centers of the x-ray fields.

"Beam-limiting device" means a device which provides a means to restrict the dimensions of the x-ray field.

"Certified components" means components of x-ray systems which are subject to regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968.

"Certified system" means an x-ray system which has one or more certified components.

"Changeable filters" means filters designed to be removed by the operator.

"Coefficient of variation (C)" means the ratio of the standard deviation to the mean value of a population of observations.

"Computed tomography" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

"Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for setting the technique factors.

"Cooling curve" means the graphical relationship between heat units stored and cooling time.

"CT" means computed tomography.

"CT gantry" means the tube housing assemblies, beam-limiting devices, detectors, and the supporting structures and frames which house these components.

"Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Diagnostic x-ray system" means an x-ray system designed for irradiation of part of the human body for the purpose of recording or visualization for diagnostic purposes.

"Entrance EXPOSURE rate" means the EXPOSURE free in air per unit time at the point where the useful beam enters the patient.

"Equipment" refer to "X-ray equipment".

"Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Filter" means material placed in the useful beam to absorb preferentially selected radiations.

"Fluoroscopic imaging assembly" means a subsystem in which x-ray photons produce a fluoroscopic image. It includes equipment housing, electrical interlocks, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

"Focal spot" means the area on the anode of the x-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates. Also referred to as "Actual focal spot."

"Gonad shield" means a protective barrier for the testes or ovaries.

"Half-value layer or HVL" means the thickness of specified material which attenuates the beam of radiation to an extent that the EXPOSURE rate is reduced to one-half of its original value. In this definition, the contribution of scatter radiation, other than that which might be present initially in the beam concerned, is deemed to be excluded.

"Healing arts screening" means the use of x-ray equipment to examine individuals who are asymptomatic for the disease for which the screening is being performed and the use of x-rays are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to order x-ray tests for the purpose of diagnosis.

"Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds: for example, kVp times mA times seconds.

"HVL" refer to "half value layer."

"Image intensifier" means a device installed in its housing which instantaneously converts an x-ray pattern into a light image of higher energy density.

"Image receptor" means a device, for example, a fluorescent screen radiographic film, solid state detector, or gaseous detector, which transforms incident x-ray photons to produce a visible image or stores the information in a form which can be made into a visible image. In those cases where means are provided to preselect a portion of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

"Irradiation" means the exposure of matter to ionizing radiation.

"Kilovolts peak" refer to "Peak tube potential".

"kV" means kilovolts.

"kVp" refer to "Peak tube potential."

"Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

"Leakage radiation" means radiation emanating from the diagnostic source assembly except for:

(a) the useful beam, and

(b) radiation produced when the exposure switch or timer is not activated.

"Leakage technique factors" means the technique factors associated with the diagnostic source assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being ten millicoulombs, ten milliampere seconds, or the minimum obtainable from the unit, whichever is larger.

(b) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(c) For other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

"Light field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

"mA" means tube current in milliamperes.

"mAs" means milliampere second or the product of the tube current in milliamperes and the time of exposure in seconds.

"Mammography imaging medical physicist" means an individual who conducts mammography surveys of mammography facilities.

"Mammography survey" means an evaluation of x-ray imaging equipment and oversight of a mammography facility's quality control program.

"Mobile x-ray equipment" refer to "X-ray equipment".

"Multiple scan average dose" means the average dose at the center of a series of scans, specified at the center of the axis of rotation of a CT x-ray system.

"New installation" means change, modification or relocation of new or existing shielding or equipment.

"Operator of diagnostic x-ray equipment" means either:

(a) The individual responsible for insuring that the appropriate technique factors are set on the x-ray equipment, or

(b) The individual who makes the radiation exposure.

"Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

"PBL" refer to "Positive beam limitation."

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

"PID" refer to "Position indicating device."

"Portable x-ray equipment" refer to "X-ray equipment".

"Position indicating device (PID)" means a device, on dental x-ray equipment which indicates the beam position and establishes a definite source-surface (skin) distance. The device may or may not incorporate or serve as a beam-limiting device.

"Positive beam limitation" means the automatic or semi-automatic adjustment of an x-ray beam to the size of the selected image receptor, whereby exposures cannot be made without such adjustment.

"Primary beam scatter" means scattered radiation which has been deviated in direction or energy by materials irradiated by the primary beam.

"Primary protective barrier" refer to "Protective barrier".

"Protective apron" means an apron made of radiation absorbing materials, used to reduce radiation exposure.

"Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure.

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam to reduce the radiation exposure for protection purposes.

(b) "Secondary protective barrier" means the material which attenuates stray radiation.

"Protective glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

"Radiation therapy simulation system" means a radiographic or fluoroscopic x-ray system intended for localizing the volume to be exposed during radiation therapy and for confirming the position and size of the therapeutic irradiation field.

"Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

"Rating" means the operating limits of an x-ray system or subsystem as specified by the component manufacturer.

"Recording" means producing a permanent form of an image resulting from x-ray photons.

"Reference plane" means a plane which is displaced from and parallel to the tomographic plane.

"Scan" means the complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

"Scan increment" means the amount of relative displacement of the patient with respect to the computer tomographic x-ray system between successive scans measured along the direction of such displacement.

"Scattered radiation" means radiation that, during passage through matter, has been deviated in direction, energy or both direction and energy. Also refer to "Primary Beam Scatter".

"Shutter" means a device attached to the tube housing assembly which can intercept the entire cross sectional area of the useful beam and which has a lead equivalency at least that of the tube housing assembly.

"SID" refer to "Source-image receptor distance".

"Source" means the focal spot of the x-ray tube.

"Source to image receptor distance" means the distance from the source to the center of the input surface of the image receptor.

"Special purpose x-ray system" means that which is designed for irradiation of specific body parts.

"Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

"Spot film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor, including a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

"SSD" means the distance between the source and the skin entrance plane of the patient.

"Stationary x-ray equipment" refer to "X-ray equipment".

"Stray radiation" means the sum of leakage and scattered radiation.

"Technique factors" means the following conditions of operation.

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For other equipment, peak tube potential in kV and either;

(i) the tube current in mA and exposure time in seconds, or

(ii) the product of tube current and exposure time in mAs.

"Termination of irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

"Tomographic plane" means that geometric plane which is identified as corresponding to the output tomogram.

"Tomographic section" means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

"Tube" means an x-ray tube, unless otherwise specified.

"Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and

other appropriate elements when they are contained within the tube housing.

"Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

"Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the switch or timer is activated.

"Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

"X-ray exposure control" means a device, switch, button, or other similar means by which an operator initiates or terminates the radiation exposure. The x-ray exposure control may include associated equipment, for example, timers and back-up timers.

"X-ray equipment" means an x-ray system, subsystem, or component thereof. Types of x-ray equipment are as follows:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

"X-ray field" means that area of the intersection of the useful beam and one of the sets of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the EXPOSURE rate is one-fourth of the maximum in the intersection.

"X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube high-voltage switches, electrical protective devices, and other appropriate elements.

"X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

"X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

R313-28-31. General and Administrative Requirements.

(1) Persons shall not make, sell, lease, transfer, lend, or install x-ray equipment or the accessories used in connection with x-ray equipment unless the accessories and equipment, when properly placed in operation and properly used, will meet the applicable requirements of these rules.

(2) The registrant shall be responsible for directing the operation of the x-ray machines which are under the registrant's administrative control. The registrant or registrant's agent shall assure that the requirements of R313-28-31(2)(a) through R313-28-31(2)(i) are met in the operation of the x-ray machines.

(a) An x-ray machine which does not meet the provisions of these rules shall not be operated for diagnostic purposes, when directed by the Director.

(b) Individuals who will be operating the x-ray equipment shall be instructed in the registrant's written radiation safety program and be qualified in the safe use of the equipment. Required operator qualifications are listed in R313-28-350.

(c) The registrant of a facility shall create and make available to x-ray operators written safety procedures, including patient holding and restrictions of the operating technique required for the safe operation of the x-ray systems. Individuals who operate x-ray systems shall be responsible for complying with these rules.

(d) Except for individuals who cannot be moved out of the room and the patient being examined, only the staff and ancillary personnel or other individuals needed for the medical procedure or training shall be present in the room during the radiographic exposure and shall be positioned as follows:

(i) individuals other than the patient shall be positioned so that no part of the body will be struck by the useful beam unless protected by not less than 0.5 mm lead equivalent material;

(ii) the x-ray operator, other staff, ancillary personnel and other individuals needed for the medical procedure shall be protected from primary beam scatter by protective aprons or barriers unless it can be shown that by virtue of distances employed, EXPOSURE levels are reduced to the limits specified in R313-15-201; and

(iii) patients who are not being examined and cannot be removed from the room shall be protected from the primary beam scatter by whole body protective barriers of not less than 0.25 mm lead equivalent material or shall be so positioned that the nearest portion of the body is at least two meters from both the tube head and nearest edge of the image receptor.

(e) For patients who have not passed reproductive age, gonad shielding of not less than 0.5 mm lead equivalent material shall be used during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

(f) Individuals shall be exposed to the useful beam for healing arts purposes only when the exposure has been specifically ordered and authorized by a licensed practitioner of the healing arts after a medical consultation. Deliberate exposures for the following purposes are prohibited:

(i) exposure of an individual for training, demonstration or other non-healing arts purposes; and

(ii) exposure of an individual for the purpose of healing arts screening except as authorized by R313-28-31(2)(i).

(g) When a patient or film must be provided with auxiliary support during a radiation exposure:

(i) mechanical holding devices shall be used when the technique permits. The written procedures, required by R313-28-31(2)(c), shall list individual projections where mechanical holding devices can be utilized;

(ii) written safety procedures, as required by R313-28-31(2)(c), shall indicate the requirements for selecting an individual to hold patients or films and the procedure that individual shall follow;

(iii) the individual holding patients or films during radiographic examinations shall be instructed in personal radiation safety and protected as required by R313-28-31(2)(d)(i);

(iv) Individuals shall not be used routinely to hold film or patients;

(v) In those cases where the patient must hold the film, except during intraoral examinations, portions of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 mm lead equivalent material; and

(vi) Facilities shall have protective aprons and gloves available in sufficient numbers to provide protection to personnel who are involved with x-ray operations and who are otherwise not shielded.

(h) Personnel monitoring. Individuals who are associated with the operation of an x-ray system are subject to the applicable requirements of R313-15.

(i) Healing arts screening. Persons proposing to conduct a healing arts screening program shall not initiate the program without prior approval of the Director. When requesting approval, that person shall submit the information outlined in R313-28-400. If information submitted becomes invalid or

outdated, the Director shall be notified immediately.

(3) Maintenance of records and information. The registrant shall maintain at least the following information for each x-ray machine:

(a) model numbers of major components;

(b) record of surveys or calculations to demonstrate compliance with R313-15-302, calibration, maintenance and modifications performed on the x-ray machine; and

(c) a shielding design report for the x-ray suite which states assumed values for workload and use factors and includes a drawing of surrounding areas showing assumed values for occupancy factors.

(4) X-ray records. Facilities shall maintain an x-ray record containing the patient's name, the types of examinations, and the dates the examinations were performed. When the patient or film must be provided with human auxiliary support, the name of the human holder shall be recorded. The registrant shall retain these records for three years after the record is made.

(5) Portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation.

(6) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

(a) The speed of the screen and film combinations used shall be the fastest speed consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for routine diagnostic radiological imaging, with the exception of standard film packets for intra-oral use in dental radiography. If the requirements of R313-28-31(6)(a) cannot be met, an exemption may be requested pursuant to R313-12-55.

(b) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

(c) X-ray systems, other than fluoroscopic, computed tomography, dental or veterinary units, shall not be utilized in procedures where the source to patient distance is less than 30 centimeters.

R313-28-32. Plan Review.

(1) Prior to construction, the floor plans, shielding specifications and equipment arrangement of all new installations, or modifications of existing installations, utilizing ionizing radiation shall be submitted to a Qualified Expert for review. The required information is denoted in R313-28-200 and R313-28-450.

(2) A copy of the Qualified Expert's conclusions regarding shielding specifications must be submitted to the Director within 14 working days.

(3) The Director may require additional modifications should a subsequent analysis of operating conditions, for example, a change in workload or use and occupancy factors, indicate the possibility of an individual receiving a dose in excess of the limits prescribed in R313-15.

R313-28-35. General Requirements for Diagnostic X-Ray Systems.

In addition to other requirements of R313-28, all diagnostic x-ray systems shall meet the following requirements:

(1) Warning label. The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This x-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

(2) Battery charge indicator. On battery powered generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(3) Leakage radiation from the diagnostic source assembly. The leakage radiation from the diagnostic source assembly measured at a distance of one meter in any direction from the source shall not exceed 25.8 uC/kg (100 milliroentgens) in one hour when the x-ray tube is operated at its leakage technique factors.

(4) Radiation from components other than the diagnostic source assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed 0.516 uC/kg (two milliroentgens) in one hour at five centimeters from accessible surfaces of the component when it is operated in an assembled x-ray system under the conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(5) Beam quality.

(a) The half value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in R313-28-35, Table I. If it is necessary to determine such half-value layer at an x-ray tube potential which is not listed in Table I, linear interpolation or extrapolation may be made.

TABLE I

DESIGN OPERATING RANGE (KILO VOLTS PEAK	MEASURED POTENTIAL (KILOVOLTS PEAK)	DENTAL INTRA-ORAL MANUFACTURED BEFORE AUGUST 1, 1974 AND ON OR AFTER DECEMBER 1, 1980	ALL OTHER DIAGNOSTIC X-RAY SYSTEMS
Below 51	30	(use prohibited)	0.3
	40	(use prohibited)	0.4
	50	1.5	0.5
	51	1.5	1.2
	60	1.5	1.3
	70	1.5	1.5
Above 70	71	2.1	2.1
	80	2.3	2.3
	90	2.5	2.5
	100	2.7	2.7
	110	3.0	3.0
	120	3.2	3.2
	130	3.5	3.5
	140	3.8	3.8
	150	4.1	4.1

(b) For capacitor discharge equipment, compliance with the requirements of R313-28-35(5)(a) shall be determined with the system fully charged and a setting of 10 mAs for exposures.

(c) The required minimal half-value layer of the useful beam shall include the filtration contributed by materials which are permanently present between the focal spot of the tube and the patient.

(d) Filtration control. For x-ray systems which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filters and shall prevent an exposure unless the minimum amount of filtration necessary to produce the HVL required by R313-28-35(5)(a) is in the useful beam for the given kVp which has been selected.

(6) Multiple tubes. When two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated prior to initiation of the exposure. For equipment manufactured after August 1, 1974, indications shall be both on the x-ray control panel and at or near the tube housing assembly which has been selected.

(7) Mechanical support of tube head. The tube housing assembly supports shall be adjusted so that the tube housing assembly will remain stable during an exposure unless the tube housing movement during exposure is a designed function of the x-ray system.

(8) Technique indicators.

(a) The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic EXPOSURE controls are used, in which case the technique factors which are set prior to the exposure shall be

indicated.

(b) On equipment having fixed technique factors, the requirements, in R313-28-35(8)(a) may be met by permanent markings. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(9) Maintaining compliance. Diagnostic x-ray systems and their associated components certified pursuant to the provisions of 21 CFR Part 1020 (2006) shall be maintained in compliance with applicable requirements of that standard.

(10) Locks. All position locking, holding, and centering devices on x-ray system components and systems shall function as intended.

(11) X-ray systems which have been granted a variance by the Director, Center for Devices and Radiological Health, Food and Drug Administration (Director), from the performance standards for ionizing radiation emitting products, in accordance with 21 CFR 1010.4 (2006) shall be deemed to satisfy the requirements in R313-28 that correspond to the variance granted by the Director. The registrant shall insure that labeling pursuant to 21 CFR 1010.5(f) (2006) remains legible and visible on the x-ray system.

R313-28-40. Fluoroscopic X-Ray Systems.

All fluoroscopic x-ray systems used shall be image intensified and meet the following requirements:

(1) Primary barrier.

(a) The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at SIDs for which the unit was designed.

(b) The x-ray tube used for fluoroscopy shall not produce x-rays unless the barrier is in position to intercept the entire useful beam.

(2) Fluoroscopic beam limitation.

(a) For certified fluoroscopic systems with or without a spot film device neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than three percent of the SID. The sum of the excess length and the excess width shall be no greater than four percent of the SID.

(b) For uncertified fluoroscopic systems with a spot film device, the x-ray beam with the shutters fully open, during fluoroscopy or spot filming, shall be no larger than the largest image receptor size for which the device is designed. Measurements shall be made at the minimum SID available but at no less than 20 centimeters table top to the film plane distance.

(c) For uncertified fluoroscopic systems without a spot film device, the requirements of R313-28-40(1) apply.

(d) Other requirements for fluoroscopic beam limitation:

(i) means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID or visible area of greater than 300 square centimeters shall be provided with means for stepless adjustment of the x-ray field;

(ii) equipment with a fixed SID and a visible area of 300 square centimeters or less shall be provided with either stepless adjustment of the x-ray field or with means to further limit the x-ray field size at the plane of the image receptor to 125 square centimeters or less;

(iii) if provided, stepless adjustment shall at the greatest SID, provide continuous field sizes from the maximum attainable to a field size of five centimeters by five centimeters or less;

(iv) for equipment manufactured after February 25, 1978, when the angle between the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor; and

(v) for non-circular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor.

(3) Spot-film beam limitation. Spot-film devices shall meet the following requirements:

(a) means shall be provided between the source and the patient for adjustment of the x-ray field size in the plane of the film to the size of that portion of the film which has been selected on the spot film selector. Adjustments shall be automatically accomplished except when the x-ray field size in the plane of the film is smaller than that of the selected portion of the film. For spot film devices manufactured after June 21, 1979, if the x-ray field size is less than the size of the selected portion of the film, the means for adjustment of the field size shall be only at the operator's option;

(b) neither the length nor the width of the x-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the selected portion of the image receptor by more than three percent of the SID when adjusted for full coverage of the selected portion of the image receptor. The sum, without regard to sign, of the length and width differences shall not exceed four percent of the SID;

(c) it shall be possible to adjust the x-ray field size in the plane of the film to a size smaller than the selected portion of the film. The minimum field size at the greatest SID shall be equal to, or less than, five by five centimeters;

(d) the center of the x-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within two percent of the SID; and

(e) on spot film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(4) Override. If a means exists to override the automatic x-ray field size adjustments required in R313-28-40(2) and (3), that means:

(a) shall be designed for use only in the event of system failure;

(b) shall incorporate a signal visible at the fluoroscopist's position which will indicate whenever the automatic field size adjustment is overridden; and

(c) shall be clearly and durably labeled as follows: FOR X-RAY FIELD LIMITATION SYSTEM FAILURE.

(5) Activation of the fluoroscopic tube. X-ray production in the fluoroscopic mode shall be controlled by a dead-man switch. When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposure immediately, but means may be provided to permit completion of a single exposure of the series in process.

(6) Entrance EXPOSURE rate allowable limits.

(a) For fluoroscopic equipment manufactured before May 19, 1995, the following requirements apply:

(i) fluoroscopic equipment which is provided with automatic exposure rate control shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 2.58 mC/kg (ten roentgens) per minute at the point where the center of the useful beam enters the patient, except:

(A) during recording of fluoroscopic images, or

(B) when an optional high level control is provided. When so provided, the equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam

enters the patient unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(ii) fluoroscopic equipment which is not provided with automatic exposure rate control shall not be operable at combinations of tube potential and current which will result in a EXPOSURE rate in excess of 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient, except:

(A) during recording of fluoroscopic images, or

(B) when an optional high level control is activated. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(iii) fluoroscopic equipment which is provided with both automatic exposure rate control and a manual mode shall not be operable at combinations of tube potential and current that will result in an exposure rate of 2.58 mC/kg (ten roentgens) per minute in either mode at the point where the center of the useful beam enters the patient except:

(A) during recording of fluoroscopic images, or

(B) when an optional high level control is provided. When so provided, the equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(b) For fluoroscopic equipment manufactured on and after May 19, 1995, the following requirements apply:

(i) fluoroscopic equipment operable at combinations of tube potential and current which will result in an EXPOSURE rate greater than 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient shall be equipped with automatic exposure rate control. Provision for manual selection of technique factors may be provided.

(ii) fluoroscopic equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 2.58 mC/kg (ten roentgens) per minute at the point where the center of the useful beam enters the patient except:

(A) during recording of images from an x-ray image-intensifier tube using photographic film or a video camera when the x-ray source is operated in pulsed mode, or

(B) when an optional high level control is activated. When the high level control is activated, the equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 5.16 mC/kg (20 roentgens) per minute at the point where the center of the useful beam enters the patient. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(c) Compliance with the requirements of R313-28-40(6) shall be determined as follows:

(i) if the source is below the x-ray table, the EXPOSURE rate shall be measured one centimeter above the tabletop or cradle;

(ii) if the source is above the x-ray table, the EXPOSURE rate shall be measured at 30 centimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement;

(iii) for a C-arm type of fluoroscope, the exposure rate shall be measured 30 centimeters from the input surface of the fluoroscopic imaging assembly, with the source positioned at available SID's, provided that the end of the beam-limiting device or spacer is no closer than 30 centimeters from the input surface of the fluoroscopic imaging assembly; or

(iv) for a lateral type fluoroscope, the exposure rate shall be measured at a point 15 centimeters from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as close as possible to the point of measurement. If the tabletop is movable, it shall be positioned as close as possible to the lateral x-ray source with the end of the beam-limiting device or spacer no closer than 15 centimeters to the x-ray table.

(d) Fluoroscopic radiation therapy simulation systems are exempt from the requirements of R313-28-40(6).

(7) Measurement of entrance EXPOSURE rates shall be performed for both maximum and typical values as follows:

(a) measurements shall be made annually or after maintenance of the system which might affect the EXPOSURE rate;

(b) results of these measurements shall be posted where the fluoroscopist may have ready access to the results while using the fluoroscope and in the record required in R313-28-31(3)(b). The measurement results shall be stated in roentgens per minute and include the machine settings used in determining results. The name of the person performing the measurements and the date the measurements were performed shall be included in the results;

(c) conditions of the annual measurement of maximum entrance EXPOSURE rate shall be performed as follows:

(i) the measurement shall be made under the conditions that satisfy the requirements of R313-28-40(6)(c);

(ii) the kVp, mA, and other selectable parameters shall be adjusted to those settings which give the maximum entrance EXPOSURE rate; and

(iii) x-ray systems that incorporate automatic exposure rate control shall have sufficient attenuative material placed in the useful beam to produce the maximum output of that system; and

(d) conditions of the annual measurement of typical entrance EXPOSURE rate are as follows:

(i) the measurement shall be made under the conditions that satisfy the requirements of R313-28-40(6)(c);

(ii) the kVp, mA, and other selectable parameters shall be those settings typical of clinical use of the x-ray system; and

(iii) the x-ray system that incorporates automatic EXPOSURE rate control shall have an appropriate phantom placed in the useful beam to produce a milliamperage and kilovoltage typical of the use of the x-ray system.

(8) Barrier transmitted radiation rate limits.

(a) The EXPOSURE rate due to transmission through the primary protective barrier with the attenuation block in the useful beam, combined with radiation from the image intensifier, if provided, shall not exceed 0.516 uC/kg (two milliroentgens) per hour at ten centimeters from accessible surfaces of the fluoroscopic imaging assembly beyond the plane of the image receptor for each mC/kg (roentgen) per minute of entrance EXPOSURE rate.

(b) Measuring compliance of barrier transmission.

(i) The EXPOSURE rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(ii) If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging

assembly positioned 30 centimeters above the tabletop.

(iii) If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 centimeters.

(iv) Movable grids and compression devices shall be removed from the useful beam during the measurement.

(9) Indication of potential and current. During fluoroscopy and cinefluorography, x-ray tube potential and current shall be continuously indicated.

(10) Source-skin distance. The source to skin distance shall not be less than:

(a) 38 centimeters on stationary fluoroscopic systems manufactured on or after August 1, 1974;

(b) 35.5 centimeters on stationary fluoroscopic systems manufactured prior to August 1, 1974;

(c) 30 centimeters on all mobile fluoroscopes; or

(d) 20 centimeters for all mobile fluoroscopes when used for specific surgical applications.

(11) Fluoroscopic timer.

(a) Means shall be provided to preset the cumulative on-time of the fluoroscopic x-ray tube. The maximum cumulative time of the timing device shall not exceed five minutes without resetting.

(b) A signal audible to the fluoroscopist shall indicate the completion of a preset cumulative on-time. The signal shall continue to sound while x-rays are produced until the timing device is reset.

(12) Control of scatter radiation.

(a) The tables of fluoroscopic assemblies when combined with normal operating procedures shall provide protection from scatter radiation so that unprotected parts of a staff or ancillary individual's body shall not be exposed to unattenuated scattered radiation which originates from under the table. The attenuation required shall be not less than 0.25 mm lead equivalent.

(b) Equipment configuration when combined with procedures shall not allow portions of a staff member's or ancillary person's body, except the extremities, to be exposed to unattenuated scattered radiation emanating from above the tabletop unless:

(i) the radiation has passed through not less than 0.25 mm lead equivalent material including, but not limited to, drapes, bucky-slot cover panel, or self supporting curtains, in addition to the lead equivalency provided by the protective apron referred to in R313-28-31(2)(d),

(ii) that individual is at least 120 centimeters from the center of the useful beam, or

(iii) it is not feasible to attach shielding to special procedures equipment and personnel are wearing protective aprons.

(13) Spot film exposure reproducibility. Fluoroscopic systems equipped with radiographic spot film mode shall meet the exposure reproducibility requirements of R313-28-54.

(14) Radiation therapy simulation systems. Radiation therapy simulation systems shall be exempt from all the requirements R313-28-40(1), (8), and (11) provided that:

(a) the systems are designed and used in such a manner that no individual other than the patient is in the x-ray room during periods of time when the system is producing x-rays; and

(b) the systems which do not meet the requirements of R313-28-40(11) are provided with a means of indicating the cumulative time that an individual patient has been exposed to x-rays. Procedures shall require, in these cases, that the timer be reset between examinations.

R313-28-51. Radiographic Systems Other than Fluoroscopic, Dental Intraoral, or Computed Tomography -- Beam Limitation.

The useful beam shall be limited to the area of clinical interest and show evidence of collimation. This shall be deemed to have been met if a positive beam limiting device meeting the manufacturer's specifications or the requirements of R313-28-300 has been properly used or if evidence of collimation is shown on at least three sides or three corners of the film, for example, projections of the shutters of the collimator, cone cutting at the corners or a border at the film's edge.

(1) General purpose stationary and mobile x-ray systems.

(a) Only x-ray systems provided with a means for independent stepless adjustment of at least two dimensions of the x-ray field shall be used.

(b) A method shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(c) The Board may grant an exemption on non-certified x-ray systems to R313-28-51(1)(a) and (b) provided the registrant makes a written application for the exemption and in that application:

(i) demonstrates it is impractical to comply with R313-28-51(1)(a) and (b); and

(ii) demonstrates the purpose of R313-28-51(1)(a) and (b) will be met by other methods.

(2) In addition to the requirements of R313-28-51(1) above, stationary general purpose x-ray systems, both certified and non-certified shall meet the following requirements:

(a) a method shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, to align the center of the x-ray field with respect to the center of the image receptor to within two percent of the SID, and to indicate the SID to within two percent;

(b) the beam-limiting device shall numerically indicate the field size in the plane of the image receptor to which it is adjusted; and

(c) indication of field size dimensions and SID's shall be specified in inches or centimeters and shall be such that aperture adjustments result in x-ray field dimensions in the plane of the image receptor which correspond to those of the image receptor to within two percent of the SID when the beam axis is perpendicular to the plane of the image receptor.

(3) Radiographic equipment designed for only one image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to dimensions no greater than those of the image receptor, and to align the center of the x-ray field with the center of the image receptor to within two percent of the SID, or shall be provided with means to both size and align the x-ray field so that the x-ray field at the plane of the image receptor does not extend beyond the edges of the image receptor.

(4) Special purpose x-ray systems.

(a) Means shall be provided to limit the x-ray field in the plane of the image receptor so that the x-ray field does not exceed each dimension of the image receptor by more than two percent of the SID when the axis of the x-ray beam is perpendicular to the plane of the image receptor.

(b) Means shall be provided to align the center of the x-ray field with the center of the image receptor to within two percent of the SID, or means shall be provided to both size and align the x-ray field so that the x-ray field at the plane of the image receptor does not extend beyond the edges of the image receptor. Compliance shall be determined with the axis of the x-ray beam perpendicular to the plane of the image receptor.

(c) R313-28-51(4)(a) and R313-28-51(4)(b) may be met with a system that meets the requirements for a general purpose

x-ray system as specified in R313-28-51(1) or, when alignment means are also provided, may be met with either;

(i) an assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirements for the combination of image receptor sizes and SID's for which the unit is designed with the beam limiting device having clear and permanent markings to indicate the image receptor size and SID for which it is designed; or

(ii) a beam-limiting device having multiple fixed apertures sufficient to meet the requirement for the combinations of image receptor sizes and SID's for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which the aperture is designed and shall indicate which aperture is in position for use.

R313-28-52. Radiographic Systems Other Than Fluoroscopic, Dental Intraoral, or Computed Tomography -- Radiation Exposure Control Devices.

(1) Exposure Initiation. Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, for example, the depression of a switch. Radiation exposure shall not be initiated without a deliberate action. In addition, it shall not be possible to initiate an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(2) Exposure termination. Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. Except for dental panoramic systems, termination of an exposure shall cause automatic resetting of the timer to its initial setting or to "zero."

(3) Manual Exposure Control: An x-ray control shall be incorporated into x-ray systems so that an exposure can be terminated at times except for:

(a) exposure of one-half second or less; or

(b) during serial radiography when means shall be provided to permit completion of a single exposure of the series in process.

(4) Automatic EXPOSURE controls, phototimers. When automatic EXPOSURE control is provided:

(a) indication shall be made on the control panel when this mode of operation is selected;

(b) when the x-ray tube potential is equal to or greater than 51 kVp, the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than the interval equivalent to two pulses; and

(c) the minimum exposure time for all equipment other than that specified in R313-28-52(4)(b) shall be equal to or less than 1/60 second or a time interval required to deliver five mAs, whichever is greater.

(5) Exposure Indication. Means shall be provided for visual indication observable at or from the operator's protected position whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(6) Exposure Duration, Timer, Linearity. For systems having independent selection of exposure time settings, the average ratio of exposure to the indicated milliampere-seconds product obtained at two consecutive timer settings or at two settings not differing by more than a factor of two shall not differ by more than 0.10 times their sum.

(7) Exposure Control Location. The x-ray exposure control shall be placed so that the operator can view the patient while making the exposure.

(8) Operator Protection.

(a) Stationary x-ray systems shall be required to have the x-ray exposure switch permanently mounted in a protected area.

(b) Mobile and portable x-ray systems which are:

(i) used continuously for greater than one week at the same location, one room or suite, shall meet the requirements of R313-28-52(8)(a); or

(ii) used for less than one week at one location, one room, or suite shall be provided with either a protective barrier at least two meters (6.5 feet) high for operator protection during exposures, or means shall be provided to allow the operator to be at least 2.7 meters (nine feet) from the tube housing assembly during the exposure.

R313-28-53. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- Source-to-Skin or Receptor Distance.

Mobile or portable radiographic systems shall be provided with a means to limit the source-to-skin distance to 30 or more centimeters.

R313-28-54. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- Exposure Reproducibility.

When technique factors, including control panel selections associated with automatic exposure control systems, are held constant the coefficient of variation of exposure for both manual and automatic exposure control systems shall not exceed 0.05. This requirement applies to clinically used techniques.

R313-28-55. Radiographic Systems - Standby Radiation From Capacitor Discharge Equipment.

Radiation emitted from the x-ray tube when the system is fully charged and the exposure switch or timer is not activated shall not exceed a rate of 0.516 uC/kg (two milliroentgens) per hour at five centimeters from accessible surfaces of the diagnostic source assembly, with the beam-limiting device fully open.

R313-28-56. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- Accuracy.

Deviation of measured technique factors from indicated values of kVp and exposure time shall not exceed the limits specified for that system by its manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed ten percent of the indicated value for kVp and ten percent of the indicated value for times greater than 50 milliseconds.

R313-28-57. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- mA/mAs Linearity.

The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer for fixed x-ray tube potentials within the range of 40 percent to 100 percent of the maximum rated potentials.

(1) Equipment having independent selection of x-ray tube current, mA. Where the tube current is continuous, the average ratios of exposure to the indicated milliampere-seconds product, C/kg/mAs or mR/mAs, obtained at two consecutive tube current settings or at two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

(2) Equipment having a combined x-ray tube current-exposure time product, mAs, selector, but not a separate tube current, mA, selector. Where the tube current is continuous, the average ratios of exposure to the indicated milliampere-seconds product, C/kg/mAs or mR/mAs, obtained at two consecutive milliampere-seconds settings or at two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

R313-28-80. Intraoral Dental Radiographic Systems.

In addition to the provisions of R313-28-31, R313-28-32 and R313-28-35, the requirements of this section apply to x-ray equipment and associated facilities used for dental radiography.

Criteria for extraoral dental radiographic systems are covered in R313-28-51, R313-28-52 and R313-28-53. Intraoral dental radiographic systems used must meet the requirements of R313-28-80.

(1) Source-to-Skin distance (SSD). X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance to not less than:

(a) 18 centimeters if operable above 50 kilovolts peak, or

(b) 10 centimeters if not operable above 50 kilovolts peak.

(2) Field limitation. Radiographic systems designed for use with an intraoral image receptor shall be provided with means to limit the x-ray field so that:

(a) if the minimum source-to-skin distance (SSD) is 18 centimeters or more, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than seven centimeters; and

(b) if the minimum SSD is less than 18 centimeters, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than six centimeters.

(3) Exposure Initiation.

(a) Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, for example, the depression of a switch. Radiation exposure shall not be initiated without a deliberate action; and

(b) It shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(4) Exposure Termination.

(a) Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor.

(b) An x-ray exposure control shall be incorporated into x-ray systems so that an exposure of more than 0.5 seconds can be terminated immediately by the operator.

(c) Termination of an exposure shall cause automatic resetting of the timer to its initial setting or to "zero."

(5) Exposure Indication. Means shall be provided for visual indication, observable from the operator's protected position, whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(6) Timer Linearity. For systems having independent selection of exposure time settings, the average ratio of exposure to the indicated milliampere-seconds product obtained at two consecutive timer settings or at two settings not differing by more than a factor of two shall not differ by more than 0.10 times their sum.

(7) Exposure Control Location and Operator Protection.

(a) Stationary x-ray systems shall be required to have the x-ray exposure control mounted in a protected area or a means to allow the operator to be at least 2.7 meters (9.0 feet) from the tube housing assembly while making exposures; and

(b) Mobile and portable x-ray systems which are:

(i) used for greater than one week in the same location, for example, a room or suite, shall meet the requirements of R313-28-80(7)(a); or

(ii) used for less than one week in the same location shall be provided with either a protective barrier at least two meters high for operator protection, or means to allow the operator to be at least 2.7 meters (nine feet) from the tube housing assembly while making exposures.

(8) Exposure Reproducibility. When all technique factors are held constant, the coefficient of variation of exposure shall not exceed 0.05 for certified x-ray systems or 0.10 for non-certified x-ray systems. This requirement applies to clinically used techniques.

(9) mA/mAs Linearity. The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer for fixed x-ray tube potentials within the range of 40 to 100 percent of the maximum rated potentials.

(a) For equipment having independent selection of x-ray tube current, the average ratios of exposure to the indicated milliampere-seconds product obtained at two consecutive tube current settings or, when the tube current selection is continuous, two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

(b) For equipment having a combined x-ray tube current-exposure time product selector but not a separate tube current selector, the average ratios of exposure to the indicated milliampere-seconds product obtained at two consecutive mAs selector settings, or when the mAs selector provides continuous selection, at two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

(10) Accuracy. Deviation of technique factors from indicated values shall not exceed the limits specified for that system by its manufacturer. In the absence of manufacturer's specifications the deviation shall not exceed ten percent of the indicated value.

(11) Administrative Controls.

(a) Patient and film holding devices shall be used when the technique permits and holding is required.

(b) The x-ray tube housing and the position indicating device shall not be hand-held during an exposure.

(c) The x-ray system shall be operated so that the useful beam at the patient's skin does not exceed the requirements of R313-28-80(2).

(d) Dental fluoroscopy without image intensification shall not be used.

(12) Hand-held Portable Dental X-ray Systems.

(a) X-ray equipment designed to be hand-held shall comply with Section R313-28-31, excluding Subsection R313-28-31(5), and with Section R313-28-80, excluding Subsections R313-28-80(7)(b) and R313-28-80(11)(b).

(b) Protective shielding of at least 0.5 millimeter lead equivalence shall be provided for the operator to protect the operator's torso, hands, face, and gonads from backscatter radiation. If the protective shielding is a backscatter shield attached to the x-ray unit, the shield shall be positioned as close to the patient as possible and the operator shall take care to remain in a protective position.

(c) Portable radiation machines designed to be hand-held are exempt from Subsection R313-28-35(7). The portable radiation machines shall be held by the tube housing support or handle and shall be used in accordance with the manufacturer's operating procedures.

(d) In addition to the requirements of Subsection R313-28-350(1), each operator shall complete the training program supplied by the manufacturer prior to using the x-ray unit. Records of training shall be maintained on file for examination by an authorized representative of the Director.

R313-28-120. Mammography X-Ray Systems - Equipment Design and Performance Standards.

Only x-ray equipment meeting the following standards shall be used for mammography examinations.

(1) Equipment Design.

(a) FDA Standards. The requirements of 21 CFR 1020.30 and 21 CFR 1020.31 (2006) are adopted and incorporated by reference.

(b) Dedicated Equipment. The x-ray equipment shall be specifically designed for mammography.

(c) Compression. Devices parallel to the imaging plane shall be available to immobilize and compress the breast during mammography procedures.

(d) Image Receptor. The x-ray equipment shall have both an 18 cm by 24 cm and a 24 cm by 30 cm image receptor and

moving grids matched to each image receptor size.

(e) Automatic Exposure Control. X-ray equipment used in healing arts screening shall have automatic exposure control capabilities with a post exposure meter which indicates either milliampere-seconds or time values.

(f) Focal Spot. The focal spot size and source to image receptor distance configurations shall be limited to those appropriate for mammography.

(g) Beam Limitation. The x-ray equipment must allow for the x-ray field to extend to or beyond the chest wall edge of the image receptor.

(h) Magnification. X-ray equipment used in a noninvasive manner, requiring techniques beyond those utilized in standard mammography of asymptomatic patients, shall have x-ray magnification capability for noninvasive procedures. The equipment shall be able to provide at least one magnification within the range of 1.4 to 2.0.

(2) Performance Standards.

(a) State Standards. The x-ray equipment shall meet the applicable performance standards in R313-28.

(b) Filtration. The useful beam shall have a half-value layer between the values of the measured kilovolts peak divided by 100 and the measured kilovolts peak divided by 100 plus 0.1 mm of aluminum equivalent. These values are to include the contribution to filtration by the compression device.

(c) Minimum Radiation Output. X-ray equipment installed after the effective date of this rule shall meet the following standard: at 28 kilovolts peak on the focal spot used in routine healing arts screening the x-ray equipment shall be capable of sustaining a minimum output of 500 mR per second for at least three seconds. This output shall be measured at a point 4.5 centimeters from the surface of the patient support device when the source to image receptor distance is at its maximum and the compression paddle is in the beam. Existing x-ray equipment shall meet this minimum radiation output standard within one year of the effective date of this rule.

(d) Exposure Linearity. For kilovolts peak settings used clinically, the exposure per mAs shall be within plus or minus ten percent of the average exposure per mAs for those mAs stations or time stations, if applicable, that are tested.

(e) Automatic Exposure Control. The automatic exposure control mode shall produce consistent film density under changing patient and examination conditions. These conditions include breast thickness, adiposity, kilovolts peak and density settings. This requirement will be deemed satisfied when:

(i) an automatic exposure control technique guide is posted, and

(ii) for a series of films obtained for attenuator thicknesses of two to seven centimeters the resulting radiographic optical densities are within plus or minus 0.2 of the average value when the kVp and density control setting are adjusted as indicated on the technique guide. The attenuator used for determining compliance shall be either acrylic or other tissue equivalent material.

(f) Patient Dose. The x-ray equipment must be capable of giving an average glandular dose to an average size breast of average tissue density that does not exceed 3.0 mGy (0.3 rad) with a grid or 1.0 mGy (0.1 rad) without a grid. This will be deemed satisfied when using an acrylic phantom of 4.5 cm thickness. In addition, under all clinical use conditions, the average glandular dose to the breast must be less than 5.0 mGy (0.5 rad) per film for healing arts screening procedures.

(3) Mammography X-ray Equipment Quality Control.

(a) Initial Installation. Upon completion of the initial installation of the x-ray equipment, and before it is commissioned for clinical use, the equipment shall be evaluated by a mammography imaging medical physicist who has been approved by the Board. The evaluation results shall be submitted to the Director for review and approval.

(b) Annual Evaluation. At intervals not to exceed 12 months or at the request of the Director, the x-ray equipment shall be evaluated by a mammography imaging medical physicist who has been approved by the Board.

(c) The registrant shall develop and implement a quality control testing procedure for monitoring the radiation performance of the x-ray equipment.

R313-28-140. Qualifications of Mammography Imaging Medical Physicist.

An individual seeking certification by the Board for approval as a mammography imaging medical physicist shall file an application for certification on forms furnished by the Division. The Board may certify individuals who meet the requirements for initial qualifications. To remain certified by the Board as a mammography imaging medical physicist, an individual shall satisfy the requirements for continuing qualifications.

(1) Initial qualifications.

(a) Be certified by the American Board of Radiology in Radiological Physics or Diagnostic Radiological Physics, or the American Board of Medical Physicists in Diagnostic Imaging Physics; or

(b) Satisfy the following educational and experience requirements:

(i) Have a master's or higher degree from an accredited university or college in physical sciences; and

(ii) Have two years full-time experience conducting mammography surveys. Five mammography surveys shall be equal to one year full-time experience.

(2) Continuing qualifications.

(a) During the three-year period after initial certification and for each subsequent three-year period, the individual shall earn 15 hours of continuing educational credits in mammography imaging; and

(b) Perform at least two mammography surveys during the 12-month period from June 1 and May 31 to remain certified by the Board.

(3) Mammography imaging medical physicists who fail to maintain the required continuing qualifications stated in R313-28-140(2) shall re-establish their qualifications before independently surveying another mammography facility. To re-establish their qualifications, mammography imaging physicists who fail to meet:

(a) The continuing education requirements of R313-28-140(2)(a) must obtain a sufficient number of continuing educational credits to bring their total credits up to the required 15 in the previous three years.

(b) The continuing experience requirement of R313-28-140(2)(b) must obtain experience by surveying two mammography facilities for each year of not meeting the continuing experience requirements under the supervision of a mammography imaging medical physicist approved by the Board.

R313-28-160. Computed Tomography X-ray Equipment.

(1) Equipment Requirements.

(a) In the event of equipment failure affecting data collection, means shall be provided to terminate the x-ray exposure automatically by either de-energizing the x-ray source or intercepting the x-ray beam with a shutter mechanism through the use of either a back-up timer or devices which monitor equipment function.

(b) A visible signal shall indicate when the x-ray exposure has been terminated through the means required by R313-28-160 (1)(a).

(c) The operator shall be able to terminate the x-ray exposure at any time during a scan, or series of scans, of greater than 0.5 second duration.

(2) Tomographic Plane Indication and Alignment.

(a) Means shall be provided to permit visual determination of the location of a reference plane. This reference plane can be offset from the location of the tomographic plane.

(b) If a device using a light source is used to satisfy R313-28-160 (2)(a), the light source shall provide illumination at levels sufficient to permit visual determination of the location of the tomographic plane or reference plane.

(c) The total error in the indicated location of the tomographic plane or reference plane shall not exceed 5 millimeters.

(3) Beam-On and Shutter Status Indicators.

(a) The computed tomography (CT) x-ray control panel and CT gantry shall provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed.

(b) Each emergency button or switch shall be clearly labeled as to its function.

(4) Indication of CT Conditions of Operation.

(a) The CT x-ray system shall be designed such that technique factors, tomographic section thickness, and scan increment shall be indicated prior to the initiation of a scan or series of scans.

(5) Quality Assurance Procedures. Quality assurance procedures shall be conducted on the CT x-ray equipment.

(a) The quality assurance procedures shall be in writing. Such procedures shall include, but not be limited to, the following:

(i) Specifications of the tests that are to be performed, including instructions to be employed in the performance of those tests; and

(ii) Specifications of the frequency at which tests are to be performed, the acceptable tolerance for each parameter measured and actions to be taken if tolerances are exceeded.

(b) The parameters measured to satisfy R313-28-160(5)(a)(ii) shall include, but not be limited to, kVp, mA and reproducibility of dose appropriate to the type of CT procedures performed.

(c) Records of tests performed to satisfy the requirements of R313-28-160(5)(a) and (b) shall be maintained for three years for inspection by the Division.

(6) Dose Calibration.

(a) Radiation measurements shall be performed at least annually and after change or replacement of components which could cause a change in the radiation output.

(b) The calibration of the radiation measuring instrument shall be traceable to a national standard and shall be calibrated at intervals not to exceed two years.

(c) Measurements shall be specified in terms of the multiple scan average dose, using phantoms and technique factors appropriate to the type of CT procedures performed.

R313-28-200. Information on Radiation Shielding Required for Plan Reviews.

In order to evaluate a need for radiation shielding associated with a plan review, the following information shall be submitted to a Qualified Expert so that an adequate review may be performed.

(1) The plans showing, as a minimum, the following:

(a) the normal location of the radiation producing equipment's radiation port, the port's travel and traverse limits, general directions of the radiation beam, locations of windows, the location of the operator's booth, and the location of the x-ray control panel;

(b) structural composition and thickness of walls, doors, partitions, floor, and ceiling of the rooms concerned;

(c) the dimensions, including height, floor to floor, of the rooms concerned;

(d) the type of occupancy of adjacent areas inclusive of space above and below the rooms concerned. If there is an exterior wall, show distance to the closest existing occupied areas;

(e) the make and model of the x-ray equipment, the maximum energy output, and the energy waveform; and

(f) the type of examination or treatment which will be performed with the equipment.

(2) Information on the anticipated workload of the x-ray systems in mA-minutes per week.

(3) A report showing all basic assumptions used in the development of the shielding specifications.

R313-28-300. Additional Requirements Applicable to Certified Systems Only.

Diagnostic x-ray systems incorporating one or more certified components shall be required to comply with the following additional requirements which relate to the certified component.

(1) Beam limitation for stationary and mobile general purpose x-ray systems.

(a) There shall be provided a means of stepless adjustment of the size of the x-ray field. The minimum field size at an SID of 100 centimeters shall be equal to or less than five centimeters by five centimeters.

(b) When a light localizer is used to define the x-ray field, it shall provide an average illumination of not less than 160 LUX (15 foot-candles) at 100 centimeters or at the maximum SID, whichever is less. The average illumination shall be based upon measurements made in the approximate center of the quadrants of the light field. Radiation therapy simulation systems are exempt from this requirement.

(2) Beam Limitation for Portable X-ray Systems. Beam limitation for portable x-ray systems shall meet the additional field limitation requirements of R313-28-51(1) or R313-28-300(1).

(3) Beam limitation and alignment on stationary general purpose x-ray systems equipped with PBL.

(a) PBL shall prevent the production of x-rays when:

(i) either the length or the width of the x-ray field in the plane of the image receptor differs, except as permitted by R313-28-300(3)(c), from the corresponding image receptor dimensions by more than three percent of the SID; or

(ii) the sum of the length and width differences as stated in R313-28-300(3)(a)(i) without regard to sign exceeds four percent of the SID.

(b) Compliance with R313-28-300(3)(a) shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor. Compliance shall be determined no sooner than five seconds after insertion of the image receptor.

(c) The PBL system shall be capable of operation, at the discretion of the operator, so that the field size at the image receptor can be adjusted to a size smaller than the image receptor through stepless adjustment of the field size. The minimum field size at a distance of 100 centimeters shall be equal to or less than five centimeters by five centimeters.

(d) The PBL system shall be designed so that if a change in image receptor does not cause an automatic return to PBL function as described in R313-28-300(3)(a), then change of the image receptor size or SID must cause the automatic return.

(4) Tube Stands for Portable X-Ray Systems. A tube stand or other mechanical support shall be used for portable x-ray systems, so that the x-ray tube housing assembly need not be hand-held during exposures.

R313-28-350. Qualifications of Operators.

Operators of diagnostic x-ray systems must be licensed to practice in Utah in accordance with Title 58 Chapter 54.

(1) The registrant shall document that the operator of

diagnostic x-ray equipment is trained in the proper choice of technique factors to be used and in the safe and effective operation of the x-ray equipment.

R313-28-400. Information to be Submitted by Persons Proposing to Conduct Healing Art Screening.

(1) Individuals requesting that the Director approve a healing arts screening program shall submit the following information:

(a) name and address of the applicant and, where applicable, the names and addresses of agents within this State;

(b) diseases or conditions for which the x-ray examinations are to be used;

(c) description, in detail, of the x-ray examinations proposed in the screening program including the frequency of screening and the duration of the entire screening program;

(d) description of the population to be examined in the screening program including age, sex, physical condition, and other appropriate information;

(e) an evaluation of known alternate methods not involving ionizing radiation which could achieve the goals of the screening program and why these methods are not used in preference to the x-ray examinations; and

(f) written evidence that:

(i) an Investigational Review Board, which has been approved by the United States Food and Drug Administration, has reviewed and approved the healing arts screening program; or

(ii) the United States Food and Drug Administration has approved the use of the x-ray examination for the diseases or conditions of interest.

(2) The Director shall not approve a request for a healing arts screening program unless the submissions required by R313-28-400(1) are determined by the Director to be complete and adequate.

R313-28-450. Minimum Design Requirements for an X-ray Machine Operator's Booth - New Installations Only.

(1) Space requirements:

(a) The operator shall be allotted not less than 0.70 square meter (7.5 square feet) of unobstructed floor space in the booth.

(b) The minimum space as indicated above may be geometric configurations with no dimension of less than 0.61 meters (two feet).

(c) The space shall be allotted excluding encumbrances by the console, for example, overhang or cables, or other similar encroachments.

(d) The booth shall be located or constructed to ensure that unattenuated primary beam scatter originating on the examination table or at the wall mounted image receptor will not reach the operator's position in the booth.

(2) Structural Requirements.

(a) The booth walls shall be permanently fixed barriers of at least 2.13 meters (seven feet) high.

(b) When a door or movable panel is used as an integral part of the booth shielding, it must have a permissive device which will prevent an exposure when the door or panel is not closed.

(c) Shielding shall be provided to meet the requirements of R313-15.

(3) X-Ray Exposure Control Placement: The x-ray exposure control for the system shall be fixed within the booth and:

(a) shall be at least one meter (40 inches) from points subject to primary beam scatter, leakage or primary beam radiation; and

(b) shall allow the operator to use the majority of the available viewing windows.

(4) Viewing system requirements:

(a) When the viewing system is a window:

(i) the viewing window shall have a visible area of at least 0.09 square meters (one square foot);

(ii) regardless of size or shape, at least 0.09 square meters (one square foot) of the window area must be centered no less than 0.6 meters (two feet) from the open edge of the booth and no less than 1.5 meters (five feet) from the floor; and

(iii) the window shall have at least the same lead equivalence of that required in the booth's wall in which it is mounted.

(b) When the viewing system is by mirrors, the mirrors shall be so located as to accomplish the general requirements of R313-28-450(4)(a).

(c) When the viewing system is by electronic means:

(i) the camera shall be so located as to accomplish the general requirements of R313-28-450(4)(a); and

(ii) there shall be an alternate viewing system as a backup for the primary system.

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R313. Environmental Quality, Radiation Control.
R313-30. Therapeutic Radiation Machines.
R313-30-1. Scope and Applicability.

(1) R313-30 establishes requirements, for which the registrant is responsible, for use of therapeutic radiation machines. The provisions of R313-30 are in addition to, and not in substitution for, other applicable provisions of these rules.

(2) The use of therapeutic radiation machines shall be by, or under the supervision of, a licensed practitioner of the healing arts who meets the training and experience criteria established by R313-30-3(3).

(3) R313-30 shall only apply to therapeutic radiation machines which accelerate electrons into a target to produce bremsstrahlung or which accelerate electrons to produce a clinically useful electron beam.

R313-30-2. Definitions.

As used in R313-30, the following definitions apply:

"Absorbed dose (D)" means the mean energy imparted by ionizing radiation to matter. Absorbed dose is determined as the quotient of dE by dM, where dE is the mean energy imparted by ionizing radiation to matter of mass dM. The SI unit of absorbed dose is joule per kilogram and the special name of the unit of absorbed dose is the gray (Gy). The previously used special unit of absorbed dose (rad) is being replaced by the gray.

"Absorbed dose rate" means absorbed dose per unit time, for machines with timers, or dose monitor unit per unit time for linear accelerators.

"Accessible surfaces" means surface of equipment or of an equipment part that can be easily or accidentally touched by persons without the use of a tool, or without opening an access panel or door.

"Added filtration" means filtration which is in addition to the inherent filtration.

"Air kerma (K)" means the kinetic energy released in air by ionizing radiation. Kerma is determined as the quotient of dE by dM, where dE is the sum of the initial kinetic energies of the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy).

"Barrier" See "Protective barrier."

"Beam axis" means the axis of rotation of the radiation head.

"Beam-limiting device" means a field defining collimator which provides a means to restrict the dimensions of the useful beam.

"Beam monitoring system" means a system designed and installed in the radiation head to detect and measure the radiation present in the useful beam.

"Beam scattering foil" means a thin piece of material, usually metallic, placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam.

"Bent beam linear accelerator" means a linear accelerator geometry in which the accelerated electron beam must change direction by passing through a bending magnet.

"Changeable filters" means filters, exclusive of inherent filtration, which can be removed from the useful beam through electronic, mechanical, or physical processes.

"Contact therapy system" means a therapeutic radiation machine with a short target to skin distance (TSD), usually less than five centimeters.

"Detector" See "Radiation detector."

"Dose monitor unit (DMU)" means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

"External beam radiation therapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

"Field-flattening filter" means a filter used to homogenize the absorbed dose rate over the radiation field.

"Filter" means material placed in the useful beam to change beam quality in therapeutic radiation machines subject to R313-30-6.

"Gantry" means that part of a therapeutic radiation machine supporting and allowing movements of the radiation head about a center of rotation.

"Gray (Gy)" means the SI unit of absorbed dose, kerma, and specific energy imparted equal to 1 joule per kilogram. The previous unit of absorbed dose (rad) is being replaced by the gray. Note that 1 Gy equals 100 rad.

"Half-value layer (HVL)" means the thickness of a specified material which attenuates x-radiation or gamma radiation to the extent that the air kerma rate, exposure rate or absorbed dose rate is reduced to one-half of the value measured without the material at the same point.

"Interlock" means a device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

"Interruption of irradiation" means the stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

"Irradiation" means the exposure of a living being or matter to ionizing radiation.

"Isocenter" means the center of the sphere through which the useful beam axis passes while the gantry moves through its full range of motions.

"Kilovolt (kV) or kilo electron volt (keV)" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one thousand volts in a vacuum. Current convention is to use kV for photons and keV for electrons.

"Lead equivalent" means the thickness of the material in question affording the same attenuation, under specified conditions, as lead.

"Leakage radiation" means radiation emanating from the therapeutic radiation machine except for the useful beam.

"Light field" means the area illuminated by light, simulating the radiation field.

"mA" means milliampere.

"Megavolt (MV) or mega electron volt (MeV)" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one million volts in a vacuum. Current convention is to use MV for photons and MeV for electrons.

"Monitor unit (MU)" See "Dose monitor unit."

"Moving beam radiation therapy" means radiation therapy with continuous displacement of one or more mechanical axes relative to the patient during irradiation. It includes arc therapy, skip therapy, conformal therapy and rotational therapy.

"Nominal treatment distance" means:

(a) For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam.

(b) For x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam. For non-isocentric equipment, this distance shall be that specified by the manufacturer.

"Patient" means an individual subjected to machine produced external beam radiation for the purposes of medical therapy.

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Periodic quality assurance check" means a procedure which is performed to ensure that a previous calibration continues to be valid.

"Phantom" means an object which attenuates, absorbs, and scatters ionizing radiation in the same quantitative manner as tissue.

"Practical range of electrons" corresponds to classical electron range where the only remaining contribution to dose is from bremsstrahlung x-rays.

"Primary dose monitoring system" means a system which will monitor the useful beam during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been delivered.

"Primary protective barrier" See "Protective barrier."

"Protective barrier" means a barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam or a barrier which attenuates the primary beam.

(b) "Secondary protective barrier" means the material which attenuates stray radiation.

"Radiation detector" means a device which, in the presence of radiation provides, by either direct or indirect means a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

"Radiation field" See "Useful beam."

"Radiation head" means the structure from which the useful beam emerges.

"Radiation Therapy Physicist" means an individual qualified in accordance with R313-30-3(4).

"Redundant beam monitoring system" means a combination of two dose monitoring systems in which each system is designed to terminate irradiation in accordance with a pre-selected number of dose monitor units.

"Scattered radiation" means ionizing radiation emitted by interaction of ionizing radiation with matter, the interaction being accompanied by a change in direction of the radiation.

"Secondary dose monitoring system" means a system which will terminate irradiation in the event of failure of the primary dose monitoring system.

"Secondary protective barrier" See "Protective barrier."

"Shadow tray" means a device attached to the radiation head to support auxiliary beam blocking material.

"Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

"Sievert (Sv)" means the SI unit of dose equivalent. The unit of dose equivalent is the joule per kilogram. The previous unit of dose equivalent (rem) is being replaced by the sievert. Note that 1 Sv equals 100 rem.

"Simulator, or radiation therapy simulation system" means an x-ray system intended for localizing the volume to be exposed during radiation therapy and reproducing the position and size of the therapeutic irradiation field.

"Source" means the region or material from which the radiation emanates.

"Source-skin distance (SSD)" See "Target-skin distance."

"Stationary beam radiation therapy" means radiation therapy without displacement of the radiation source relative to the patient during irradiation.

"Stray radiation" means the sum of leakage and scattered radiation.

"Target" means that part of an x-ray tube or particle accelerator onto which is directed a beam of accelerated particles to produce ionizing radiation or other particles.

"Target-skin distance (TSD)" means the distance measured along the beam axis from the center of the front surface of the x-ray target or electron virtual source to the surface of the irradiated object or patient.

"Tenth-value layer (TVL)" means the thickness of a specified material which, x-radiation or gamma radiation to the extent that the air kerma rate, exposure rate or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

"Termination of irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Therapeutic radiation machine" means x-ray or electron-producing equipment designed and used for external beam radiation therapy.

"Tube" means an x-ray tube, unless otherwise specified.

"Tube housing assembly" means the tube housing with tube installed. It includes high-voltage and filament transformers and other appropriate elements that are contained within the tube housing.

"Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the therapeutic radiation machine to produce radiation.

"Virtual source" means a point from which radiation appears to originate.

"Wedge filter" means a filter which effects continuous change in transmission over all or a part of the radiation field.

"X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

R313-30-3. General Administrative Requirements for Facilities Using Therapeutic Radiation Machines.

(1) Administrative Controls. The registrant shall be responsible for directing the operation of the therapeutic radiation machines which have been registered with the Department. The registrant or the registrant's agent shall ensure that the requirements of R313-30 are met in the operation of the therapeutic radiation machines.

(2) A therapeutic radiation machine which does not meet the provisions of these rules shall not be used for irradiation of patients.

(3) Training for External Beam Radiation Therapy Authorized Users. The registrant for a therapeutic radiation machine subject to R313-30-6 or R313-30-7 shall require the authorized user to be a physician who:

(a) Is certified in:

(i) Radiology or therapeutic radiology by the American Board of Radiology; or

(ii) Radiation oncology by the American Osteopathic Board of Radiology; or

(iii) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(iv) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has completed 200 hours of instruction in basic radiation techniques applicable to the use of an external beam radiation therapy unit, 500 hours of supervised work experience, and a minimum of three years of supervised clinical experience.

(i) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology.

(ii) To satisfy the requirement for supervised work experience, training shall be under the supervision of an authorized user and shall include:

(A) Review of the full calibration measurements and

periodic quality assurance checks;

(B) Preparing treatment plans and calculating treatment times;

(C) Using administrative controls to prevent misadministrations;

(D) Implementing emergency procedures to be followed in the event of the abnormal operation of a external beam radiation therapy unit or console; and

(E) Checking and using radiation survey meters.

(iii) To satisfy the requirement for a period of supervised clinical experience, training shall include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user. The supervised clinical experience shall include:

(A) Examining individuals and reviewing their case histories to determine their suitability for external beam radiation therapy treatment, and limitations and contraindications;

(B) Selecting proper dose and how it is to be administered;

(C) Calculating the external beam radiation therapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(D) Post-administration follow-up and review of case histories.

(iv) An individual who satisfies the requirements in R313-30-3(b), but not R313-30-3(a), must submit an application to the Director and must satisfy the requirements in R313-30-3(a) within one year of initial application to the Director.

(c) After December 31, 1994, a physician shall not act as an authorized user for a therapeutic radiation machine until the physician's training has been reviewed and approved by the Director.

(4) Training for Radiation Therapy Physicist. The registrant for a therapeutic radiation machine subject to R313-30-6 or R313-30-7 shall require the Radiation Therapy Physicist to:

(a) Satisify the provisions of R313-16, as a provider of radiation services in the area of calibration and compliance surveys of external beam radiation therapy units; and

(b) Be certified by the American Board of Radiology in:

(i) Therapeutic radiological physics; or

(ii) Roentgen-ray and gamma-ray physics; or

(iii) X-ray and radium physics; or

(iv) Radiological physics; or

(c) Be certified by the American Board of Medical Physics in Radiation Oncology Physics; or

(d) Be certified by the Canadian College of Medical Physics; or

(e) Hold a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and have completed one year of full time training in therapeutic radiological physics and also one year of full time work experience under the supervision of a Radiation Therapy Physicist at a medical institution. To meet this requirement, the individual shall have performed the tasks listed in R313-30-4(1), R313-30-6(16), R313-30-7(19), R313-30-6(17), and R313-30-7(20) under the supervision of a Radiation Therapy Physicist during the year of work experience.

(f) Notwithstanding the provisions of R313-30-3(4)(e), certification pursuant to R313-30-3(4)(b), (c) or (d) shall be required on or before December 31, 1999 for all persons currently qualifying as a Radiation Therapy Physicist pursuant to R313-30-3(4)(e).

(5) Qualifications of Operators.

(a) Individuals who will be operating a therapeutic radiation machine for medical use shall be American Registry of Radiologic Technologists (ARRT) Registered Radiation Therapy Technologists.

(b) The names and training of personnel currently operating a therapeutic radiation machine shall be kept on file at the facility. Information on former operators shall be retained for a period of at least two years beyond the last date they were authorized to operate a therapeutic radiation machine at that facility.

(6) Written safety procedures and rules shall be developed by a Radiation Therapy Physicist and shall be available in the control area of a therapeutic radiation machine, including restrictions required for the safe operation of the particular therapeutic radiation machine. The operator shall be familiar with these rules as required in R313-18-12(1)(c).

(7) Individuals shall not be exposed to the useful beam except for medical therapy purposes. Exposure for medical therapy purposes shall be ordered in writing by an authorized user who is specifically identified on the Certificate of Registration. This provision specifically prohibits deliberate exposure of an individual for training, demonstration or other non-healing-arts purposes.

(8) Visiting Authorized User. Notwithstanding the provisions of R313-30-3(7), a registrant may permit a physician to act as a visiting authorized user under the term of the registrant's Certificate of Registration for up to 60 days per calendar year under the following conditions:

(a) The visiting authorized user has the prior written permission of the registrant's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee; and

(b) The visiting authorized user meets the requirements established for authorized users in R313-30-3(3)(a) and R313-30-3(3)(b); and

(c) The registrant maintains copies of records specified by R313-30-3(8) for five years from the date of the last visit.

(9) Individuals associated with the operation of a therapeutic radiation machine shall be instructed in and shall comply with the provisions of the registrant's quality management program. In addition to the requirements of R313-30, these individuals are also subject to the requirements of R313-15-201, R313-15-202, R313-15-205 and R313-15-502.

(10) Information and Maintenance Record and Associated Information. The registrant shall maintain the following information in a separate file or package for therapeutic radiation machines, for inspection by the representatives of the Director:

(a) Report of acceptance testing;

(b) Records of surveys, calibrations, and periodic quality assurance checks of the therapeutic radiation machine required by R313-30, as well as the names of persons who performed the activities;

(c) Records of major maintenance and modifications performed on the therapeutic radiation machine after the effective date of these rules, as well as the names of persons who performed the services; and

(d) Signature of person authorizing the return of therapeutic radiation machine to clinical use after service, repair, or upgrade.

(11) Records Retention. Records required by R313-30 shall be retained until disposal is authorized by the Director unless another retention period is specifically authorized in R313-30. Required records shall be retained in an active file from at least the time of generation until the next inspection by a representative of the Director. A required record generated prior to the last inspection may be microfilmed or otherwise archived as long as a complete copy of said record can be

retrieved until the Director authorizes final disposal.

R313-30-4. General Technical Requirements for Facilities Using Therapeutic Radiation Machines.

(1) Protection Surveys.

(a) The registrant shall ensure that radiation protection surveys of new facilities, and existing facilities not previously surveyed are performed with an operable radiation measurement survey instrument calibrated in accordance with R313-30-8. The radiation protection survey shall be performed by, or under the direction of, a Radiation Therapy Physicist or a Certified Health Physicist and shall verify that, with the therapeutic radiation machine in a "BEAM-ON" condition, with the largest clinically available treatment field and with a scattering phantom in the useful beam of radiation:

(i) Radiation levels in restricted areas are not likely to cause personnel exposures in excess of the limits specified in R313-15-201(1); and

(ii) Radiation levels in unrestricted areas do not exceed the limits specified in R313-15-301(1).

(b) In addition to the requirements of R313-30-4(1)(a), a radiation protection survey shall also be performed prior to subsequent medical use and:

(i) After making changes in the treatment room shielding;

(ii) After making changes in the location of the therapeutic radiation machine within the treatment room;

(iii) After relocation of, or modification of, the therapeutic radiation machine; or

(iv) Before using the therapeutic radiation machine in a manner that could result in increased radiation levels in areas outside the external beam radiation therapy treatment room.

(c) The survey record shall indicate instances where the facility, in the opinion of the Radiation Therapy Physicist or a Certified Health Physicist, is in violation of applicable radiation protection rules. The survey record shall also include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the therapeutic radiation machine, the instruments used to measure radiation levels, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in areas expressed in microsieverts, millirems, per hour, the calculated maximum level of radiation over a period of one week for restricted and unrestricted areas, and the signature of the individual responsible for conducting the survey;

(d) If the results of the surveys required by R313-30-4(1)(a) or R313-30-4(1)(b) indicate radiation levels in excess of the respective limit specified in R313-30-4(1)(a), the registrant shall lock the control in the "OFF" position and not use the unit:

(i) Except as may be necessary to repair, replace, or test the therapeutic radiation machine, the therapeutic radiation machine shielding, or the treatment room shielding; or

(ii) Until the registrant has received a written approval from the Director.

(2) Modification of Radiation Therapy Unit or Room Before Beginning a Treatment Program. If the survey required by R313-30-4(1) indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by R313-15-301(1) of these rules, before beginning the treatment program the registrant shall:

(a) Either equip the unit with beam direction interlocks or add additional radiation shielding to ensure compliance with R313-15-301(1) of these rules;

(b) Perform the survey required by R313-30-4(1) again; and

(c) Include in the report required by R313-30-4(4) the results of the initial survey, a description of the modification made to comply with R313-30-4(2)(a), and the results of the second survey; or

(d) Request and receive a registration amendment under R313-15-301(3) of these rules that authorizes radiation levels in unrestricted areas greater than those permitted by R313-15-301(1) of these rules.

(3) Possession of Survey Instruments. Facility locations authorized to use a therapeutic radiation machine in accordance with R313-30-6 and R313-30-7 shall possess appropriately calibrated portable monitoring equipment. As a minimum, the equipment shall include a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 uSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The survey instruments shall be operable and calibrated in accordance with R313-30-8.

(4) Reports of External Beam Radiation Therapy Surveys and Measurements. The registrant for a therapeutic radiation machine subject to R313-30-6 or R313-30-7 shall furnish a copy of the records required in R313-30-4(1) and R313-30-4(2) to the Director within 30 days following completion of the action that initiated the record requirement.

R313-30-5. Quality Management Program.

(1) In addition to the definitions in R313-30-2, the following definitions are applicable to a quality management program:

"Course" means the entire treatment consisting of multiple fractions as prescribed in the written directive.

"Misadministration" means the administration of an external beam radiation therapy dose:

(a) Involving the wrong patient, wrong treatment modality, or wrong treatment site;

(b) When the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten percent of the total prescribed dose;

(c) When the calculated weekly administered dose differs from the weekly prescribed dose by more than 30 percent; or

(d) When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose;

"Prescribed dose" means the total dose and dose per fraction as documented in the written directive.

"Recordable event" means the administration of an external beam radiation therapy dose when the calculated weekly administered dose differs by 15 percent or more from the weekly prescribed dose;

"Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of radiation, containing the following information: total dose, dose per fraction, treatment site and overall treatment period.

(2) Scope and Applicability. Applicants or registrants subject to R313-30-6 or R313-30-7 shall establish and maintain a written quality management program to provide high confidence that radiation will be administered as directed by the authorized user. The quality management program shall include written policies and procedures to meet the following specific objectives:

(a) Prior to administration, a written directive is prepared for an external beam radiation therapy dose;

(i) Notwithstanding R313-30-5(2)(a), a written revision to an existing written directive may be made provided that the revision is dated and signed by an authorized user prior to administration of the external beam radiation therapy dose or the next external beam radiation therapy fractional dose;

(ii) Notwithstanding R313-30-5(2)(a), if, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive shall be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written

directive is signed by an authorized user within 48 hours of the oral revision;

(iii) Notwithstanding R313-30-5(2)(a), if, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive shall be acceptable, provided that the information contained in the oral directive is documented immediately in the patient's record and a written directive is prepared and signed by an authorized user within 24 hours of the oral directive.

(b) Prior to the administration of a course of radiation treatments, the patient's identity is verified, by more than one method, as the individual named in the written directive;

(c) External beam radiation therapy final plans of treatment and related calculations are in accordance with the respective written directives;

(d) An administration is in accordance with the written directive; and

(e) Unintended deviations from the written directive is identified and evaluated, and appropriate action are taken.

(3) Development of Quality Management Program.

(a) An application for registration subject to R313-30-6 or R313-30-7 shall include a quality management program that specifies staff, duties and responsibilities, and equipment and procedures as part of the application required by R313-16 of these rules. The registrant shall implement the program upon issuance of a Certificate of Registration by the Director;

(b) Existing registrants subject to R313-30-6 or R313-30-7 shall submit to the Director a written certification that a quality management program has been implemented by December 31, 1994.

(4) As a part of the quality management program, the registrant shall:

(a) Develop procedures for, and conduct a review of, the quality management program including, since the last review, an evaluation of a representative sample of patient administrations, recordable events, and misadministrations to verify compliance with the quality management program;

(b) Conduct these reviews annually. The intervals should not exceed 12 months and shall not exceed 13 months;

(c) Evaluate these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the requirements of R313-30-5(2); and

(d) Maintain records of these reviews, including the evaluations and findings of the reviews, in a form that can be readily audited, for three years.

(5) The registrant shall evaluate and respond, within 30 days after discovery of the recordable event, to recordable events by:

(a) Assembling the relevant facts including the cause;

(b) Identifying what corrective actions are required to prevent recurrence; and

(c) Retaining a record, in a form that can be readily audited, for three years, of the relevant facts and what corrective actions were taken.

(6) The registrant shall retain:

(a) Written directives; and

(b) A record of administered radiation doses, in a form that can be readily audited, for three years after the date of administration.

(7) The registrant may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased.

(8) The registrant shall evaluate misadministrations and shall take the following actions in response to a misadministration:

(a) Notify the Director by telephone no later than the next calendar day after discovery of the misadministration;

(b) Submit a written report to the Director within 15 days after discovery of the misadministration. The written report shall include: the registrant's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the patient; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the registrant notified the patient or the patient's responsible relative or guardian, this person will subsequently be referred to as "the patient," and if not, why not; and if the patient was notified, what information was provided to the patient. The report shall not include the patient's name or other information that could lead to identification of the patient;

(c) Notify the referring physician and also notify the patient of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the registrant either that the physician will inform the patient, or that, based on medical judgment, telling the patient would be harmful. The registrant is not required to notify the patient without first consulting the referring physician. If the referring physician or patient cannot be reached within 24 hours, the registrant shall notify the patient as soon as possible thereafter. The registrant shall not delay appropriate medical care for the patient, including necessary remedial care as a result of the misadministration, because of a delay in notification;

(d) Retain a record of misadministrations for five years. The record shall contain the names of individuals involved; including the prescribing physician, allied health personnel, the patient, and the patient's referring physician; the patient's social security number or identification number if one has been assigned; a brief description of the event; why it occurred; the effect on the patient; what improvements are needed to prevent recurrence; and the actions taken to prevent recurrence; and

(e) If the patient was notified, furnish, within 15 days after discovery of the misadministration, a written report to the patient by sending either a copy of the report that was submitted to the Director, or a brief description of both the event and the consequences as they may effect the patient, provided a statement is included that the report submitted to the Director can be obtained from the registrant;

(9) Aside from the notification requirement, nothing in R313-30-5(8) affects the rights or duties of registrants and physicians in relation to patients, the patient's responsible relatives or guardians, or to others.

R313-30-6. Therapeutic Radiation Machines of Less Than 500 kV.

(1) Leakage Radiation. When the x-ray tube is operated at its maximum rated tube current for the maximum kV, the leakage air kerma rate shall not exceed the value specified at the distance specified for that classification of therapeutic radiation machine:

(a) Systems 5-50 kV. The leakage air kerma rate measured at a position five centimeters from the tube housing assembly shall not exceed 1 mGy (100 mrad) in one hour.

(b) Systems greater than 50 and less than 500 kV. The leakage air kerma rate measured at a distance of one meter from the source in every direction shall not exceed 1 cGy (1 rad) in one hour. This air kerma rate measurement may be averaged over areas no larger than 100 square centimeters. In addition, the air kerma rate at a distance of five centimeters from the surface of the tube housing assembly shall not exceed 30 cGy (30 rad) per hour.

(2) Permanent Beam Limiting Devices. Permanent diaphragms or cones used for limiting the useful beam shall provide at least the same degree of attenuation as required for the tube housing assembly.

(3) Adjustable or Removable Beam Limiting Devices.

(a) Adjustable or removable beam limiting devices, diaphragms, cones or blocks shall not transmit more than five percent of the useful beam for the most penetrating beam used;

(b) When adjustable beam limiting devices are used, the position and shape of the radiation field shall be indicated by a light beam.

(4) Filter System. The filter system shall be so designed that:

(a) Filters can not be accidentally displaced at every possible tube orientation;

(b) For equipment installed after the effective date of these rules, an interlock system prevents irradiation if the proper filter is not in place;

(c) The air kerma rate escaping from the filter slot shall not exceed 1 cGy (1 rad) per hour at one meter under operating conditions; and

(d) Filters shall be marked as to its material of construction and its thickness.

(5) Tube Immobilization.

(a) The x-ray tube shall be so mounted that it can not accidentally turn or slide with respect to the housing aperture; and

(b) The tube housing assembly shall be capable of being immobilized for stationary portal treatments.

(6) Source Marking. The tube housing assembly shall be so marked that it is possible to determine the location of the source to within five millimeters, and the marking shall be readily accessible for use during calibration procedures.

(7) Beam Block. Contact therapy tube housing assemblies shall have a removable shield of material, equivalent in attenuation to 0.5 millimeters of lead at 100 kV, which can be positioned over the entire useful beam exit port during periods when the beam is not in use.

(8) Timer. A suitable irradiation control device shall be provided to terminate the irradiation after a pre-set time interval.

(a) A timer which has a display shall be provided at the treatment control panel. The timer shall have a pre-set time selector. The timer shall activate with an indication of "BEAM-ON" and retain its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the timer;

(b) For equipment manufactured after the effective date of these rules, the timer shall be a cumulative timer with an elapsed time indicator. Otherwise, the timer may be a countdown timer;

(c) The timer shall terminate irradiation when a pre-selected time has elapsed, if the dose monitoring system present has not previously terminated irradiation;

(d) The timer shall permit pre-setting and determination of exposure times as short as one second;

(e) The timer shall not permit an exposure if set at zero;

(f) The timer shall not activate until the shutter is opened when irradiation is controlled by a shutter mechanism unless calibration includes a timer error correction to compensate for mechanical lag; and

(g) Timer shall be accurate to within one percent of the selected value or to within one second, whichever is greater.

(9) Control Panel Functions. The control panel, in addition to the displays required by other provisions in R313-30-6, shall have:

(a) An indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(b) An indication of whether x-rays are being produced;

(c) Means for indicating x-ray tube potential and current;

(d) The means for terminating an exposure at any time;

(e) A locking device which will prevent unauthorized use of the therapeutic radiation machine; and

(f) For therapeutic radiation machines manufactured after the effective date of these rules, a positive display of specific filters in the beam.

(10) Multiple Tubes. When a control panel may energize more than one x-ray tube:

(a) It shall be possible to activate only one x-ray tube at a time;

(b) There shall be an indication at the control panel identifying which x-ray tube is activated; and

(c) There shall be an indication at the tube housing assembly when that tube is energized.

(11) Target-to-Skin Distance (TSD). There shall be a means of determining the central axis TSD to within one centimeter and of reproducing this measurement to within two millimeters thereafter.

(12) Shutters. Unless it is possible to bring the x-ray output to the prescribed exposure parameters within five seconds after the x-ray "ON" switch is energized, the beam shall be attenuated by a shutter having a lead equivalency not less than that of the tube housing assembly. In addition, after the unit is at operating parameters, the shutter shall be controlled electrically by the operator from the control panel. An indication of shutter position shall appear at the control panel.

(13) Low Filtration X-ray Tubes. Therapeutic radiation machines equipped with a beryllium or other low-filtration window shall have a label clearly marked on the tube housing assembly and shall be provided with a permanent warning device on the control panel that is activated when no additional filtration is present, to indicate that the dose rate is very high.

(14) Facility Design Requirements for Therapeutic Radiation Machines Capable of Operating in the Range 50 kV to 500 kV. In addition to shielding adequate to meet requirements of R313-30-9, the treatment room shall meet the following design requirements:

(a) Aural Communication. Provision shall be made for continuous two-way aural communication between the patient and the operator at the control panel;

(b) Viewing Systems. Provision shall be made to permit continuous observation of the patient during irradiation and the viewing system shall be so located that the operator can observe the patient from the control panel. The therapeutic radiation machine shall not be used for patient irradiation unless at least one viewing system is operational.

(15) Additional Requirements. Treatment rooms which contain a therapeutic radiation machine capable of operating above 150 kV shall meet the following additional requirements:

(a) Protective barriers shall be fixed except for entrance doors or beam interceptors;

(b) The control panel shall be located outside the treatment room or in a totally enclosed booth, which has a ceiling, inside the room;

(c) Interlocks shall be provided so that entrance doors, including doors to interior booths, shall be closed before treatment can be initiated or continued. If the radiation beam is interrupted by a door opening, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel; and

(d) When a door referred to in R313-30-6(15)(c) is opened while the x-ray tube is activated, the irradiation shall be interrupted either electrically or by the closure of the shutter.

(16) Full Calibration Measurements.

(a) Full calibration of a therapeutic radiation machine subject to R313-30-6 shall be performed by, or under the direct supervision of, a Radiation Therapy Physicist:

(i) Before the first medical use following installation or reinstallation of the therapeutic radiation machine;

(ii) Annually. The intervals should not exceed 12 months and shall not exceed 13 months; and

(iii) Before medical use under the following conditions:

(A) Whenever quality assurance check measurements indicate that the radiation output differs by more than five percent from the value obtained at the last full calibration and the difference cannot be reconciled; and

(B) Following a component replacement, major repair, or modification of components that could significantly affect the characteristics of the radiation beam.

(iv) Notwithstanding the requirements of R313-30-6(16)(a)(iii):

(A) Full calibration of therapeutic radiation machines with multi-energy capabilities is required only for those modes and energies that are not within their acceptable range; and

(B) If the repair, replacement or modification does not affect all energies, full calibration shall be performed on the affected energy that is in most frequent clinical use at the facility. The remaining energies may be validated with quality assurance check procedures against the criteria in R313-30-6(16)(a)(iii)(A).

(v) The registrant shall use the dosimetry system described in R313-30-8(6)(a) to perform the full calibration required in R313-30-6(16)(b);

(b) To satisfy the requirement of R313-30-6(16)(a), full calibration shall include measurements recommended for annual calibration by NCRP Report 69, "Dosimetry of X-Ray and Gamma Ray Beams for Radiation Therapy in the Energy Range 10 keV to 50 MeV," 1981 ed., which is adopted and incorporated by reference.

(c) The registrant shall maintain a record of calibrations for the duration of the registration. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for both the therapeutic radiation machine and the x-ray tube, the model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine, and the signature of the Radiation Therapy Physicist responsible for performing the calibration.

(17) Periodic Quality Assurance Checks.

(a) Periodic quality assurance checks shall be performed on therapeutic radiation machines subject to R313-30-6, which are capable of operation at greater than 50 kV.

(b) To satisfy the requirement of R313-30-6(17)(a), quality assurance checks shall meet the following requirements:

(i) The registrant shall perform quality assurance checks in accordance with written procedures established by the Radiation Therapy Physicist; and

(ii) The quality assurance check procedures shall specify the frequency at which tests or measurements are to be performed. The quality assurance check procedures shall specify that the quality assurance check shall be performed during the calibration specified in R313-30-6(16)(a). The acceptable tolerance for parameters measured in the quality assurance check, when compared to the value for that parameter determined in the calibration specified in R313-30-6(16)(a), shall be stated.

(c) The cause for a parameter exceeding a tolerance set by the Radiation Therapy Physicist shall be investigated and corrected before the system is used for patient irradiation;

(d) Whenever a quality assurance check indicates a significant change in the operating characteristics of a system, as specified in the Radiation Therapy Physicist's quality assurance check procedures, the system shall be recalibrated as required in R313-30-6(16)(a);

(e) The registrant shall use the dosimetry system described in R313-30-8(6)(b) to make the quality assurance check required in R313-30-6(17)(b);

(f) The registrant shall have the Radiation Therapy Physicist review and sign the results of radiation output quality assurance checks monthly. The interval should not exceed 30 days and shall not exceed 40 days;

(g) Therapeutic radiation machines subject to R313-30-6 shall have safety quality assurance checks of external beam radiation therapy facilities performed monthly. The interval should not exceed 30 days and shall not exceed 40 days;

(h) Notwithstanding the requirements of R313-30-6(17)(f) and R313-30-6(17)(g), the registrant shall ensure that no therapeutic radiation machine is used to administer radiation to humans unless the quality assurance checks required by R313-30-6(17)(f) and R313-30-6(17)(g) have been performed within the required interval immediately prior to the administration;

(i) To satisfy the requirement of R313-30-6(17)(g), safety quality assurance checks shall ensure proper operation of:

(i) Electrical interlocks at external beam radiation therapy room entrances;

(ii) Proper operation of the "BEAM-ON" and termination switches;

(iii) Beam condition indicator lights on the access doors, control console, and in the radiation therapy room;

(iv) Viewing systems;

(v) If applicable, electrically operated treatment room doors from inside and outside the treatment room;

(j) The registrant shall maintain a record of quality assurance checks required by R313-30-6(17)(a) and R313-30-6(17)(g) for three years. The record shall include the date of the quality assurance check, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the manufacturer's name, model number and serial number of the instruments used to measure the radiation output of the therapeutic radiation machine, and the signature of the individual who performed the periodic quality assurance check.

(18) Operating Procedures.

(a) The therapeutic radiation machine shall not be used for irradiation of patients unless the requirements of R313-30-6(16) and R313-30-6(17) have been met;

(b) Therapeutic radiation machines shall not be left unattended unless secured pursuant to R313-30-6(9)(e);

(c) When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices shall be used;

(d) The tube housing assembly shall not be held by an individual during operation unless the assembly is designed to require holding and the peak tube potential of the system does not exceed 50 kV. In these cases, the holder shall wear protective gloves and apron of not less than 0.5 millimeters lead equivalency at 100 kV;

(e) A copy of the current operating and emergency procedures shall be maintained at the therapeutic radiation machine control console; and

(f) No individual other than the patient shall be in the treatment room during exposures from therapeutic radiation machines operating above 150 kV. At energies less than or equal to 150 kV, individuals, other than the patient, in the treatment room shall be protected by a barrier sufficient to meet the requirements of R313-15-201 of these rules.

R313-30-7. Therapeutic Radiation Machines - Photon Therapy Systems (500 kV and Above) and Electron Therapy Systems (500 keV and Above).

(1) Leakage Radiation Outside the Maximum Useful Beam in Photon and Electron Modes.

(a) The absorbed dose rate due to leakage radiation (excluding neutrons) at any point outside the maximum sized useful beam, but within a circular plane of radius two meters which is perpendicular to and centered on the central axis of the useful beam at the nominal treatment distance, that is at the plane of the patient, shall not exceed a maximum of 0.2 percent and an average of 0.1 percent of the absorbed dose rate on the central axis of the beam at the nominal treatment distance. Measurements shall be averaged over an area not exceeding 100 square centimeters at a minimum of 16 points uniformly distributed in the plane;

(b) Except for the area defined in R313-30-7(1)(a), the absorbed dose rate, excluding that from neutrons, at one meter from the electron path between the electron source and the

target or electron window shall not exceed 0.5 percent of the absorbed dose rate on the central axis of the beam at the nominal treatment distance. Measurements shall be averaged over an area not exceeding 100 square centimeters;

(c) For equipment manufactured after the effective date of these rules, the neutron absorbed dose outside the useful beam shall be in compliance with applicable acceptance criteria; and

(d) For therapeutic radiation machines, the registrant shall determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified in R313-30-7(1)(a) through R313-30-7(1)(c) for the specified operating conditions. Records on leakage radiation measurements shall be maintained at the installation for inspection by representatives of the Director.

(2) Leakage Radiation Through Beam Limiting Devices.

(a) Photon Radiation.

(i) Adjustable or interchangeable beam limiting devices, such as the collimating jaws or x-ray cones, shall attenuate the useful beam so that at the nominal treatment distance, the maximum absorbed dose anywhere in the area shielded by the beam limiting devices shall not exceed two percent of the maximum absorbed dose on the central axis of the useful beam measured in a ten centimeters by ten centimeters radiation field; and

(ii) Interchangeable beam limiting devices, such as auxiliary beam blocking material, shall attenuate the useful beam so that at the nominal treatment distance, the maximum absorbed dose anywhere in the area shielded by the interchangeable beam limiting device shall not exceed five percent of the maximum absorbed dose on the central axis of the useful beam measured in a ten centimeter by ten centimeter radiation field.

(b) Electron Radiation. Adjustable or interchangeable electron applicators shall attenuate the radiation, including but not limited to photon radiation generated by electrons incident on the beam limiting device and electron applicator and other parts of the radiation head, so that the absorbed dose in a plane perpendicular to the central axis of the useful beam at the nominal treatment distance shall not exceed:

(i) A maximum of two percent of the absorbed dose on the central axis of the useful beam at the nominal treatment distance. This limit shall apply beyond a line seven centimeters outside the periphery of the useful beam; and

(ii) A maximum of ten percent of the absorbed dose on the central axis of the useful beam at the nominal treatment distance. This limit shall apply beyond a line two centimeters outside the periphery of the useful beam.

(c) Measurement of Leakage Radiation.

(i) Photon Radiation. Measurements of leakage radiation through the beam limiting devices shall be made with the beam limiting devices closed and residual apertures blocked by at least two tenth value layers of suitable absorbing material. In the case of overlapping beam limiting devices, the leakage radiation through the sets of beam limiting devices shall be measured independently at the depth of maximum dose. Measurements shall be made using a radiation detector of area not exceeding ten square centimeters;

(ii) Electron Radiation. Measurements of leakage radiation through the electron applicators shall be made with an appropriate radiation detector suitably protected against radiation which has been scattered from material beyond the radiation detector. Measurements shall be made using an appropriate amount of water equivalent build up material for the energies being measured.

(3) Filters and Wedges.

(a) Filters and wedges which are removable from the system shall be clearly marked with an identification number;

(i) For removable wedge filters, the nominal wedge angle shall appear on the wedge, or on the wedge tray if the wedge filter is permanently mounted to the tray.

(ii) If the wedge or wedge tray is damaged, the Radiation Therapy Physicist will decide if the wedge transmission factor shall be redetermined;

(b) For equipment manufactured after the effective date of these rules which utilize a system of wedge filters:

(i) Irradiation shall not be possible until a selection of a wedge filter or a positive selection to use "no wedge filter" has been made at the treatment control panel;

(ii) An interlock system shall be provided to prevent irradiation if the wedge filter selected is not in the correct position;

(iii) A display shall be provided at the treatment control panel showing the wedge filters in use; and

(iv) An interlock shall be provided to prevent irradiation if a wedge filter selection operation, either manual or automatic, carried out in the treatment room does not agree with the wedge filter selection operation carried out at the treatment control panel.

(c) If the absorbed dose rate information required by R313-30-7(8) relates exclusively to operation with a field flattening filter or beam scattering foil in place, the filter or foil shall be removable only by the use of tools. If removable, the filter or foil shall be interlocked to prevent incorrect selection and incorrect positioning.

(d) For equipment manufactured after the effective date of these rules which utilize a system of interchangeable field flattening filters or interchangeable beam scattering foils:

(i) An interlock system shall be provided to prevent irradiation if the appropriate flattening filter for the x-ray energy selected is not in the correct position in the beam;

(ii) An interlock system shall be provided to prevent irradiation if the appropriate beam scattering foil for the electron energy selected is not in the correct position in the beam;

(iii) An interlock system shall be provided to prevent irradiation if no scattering foil is in place for the electron beams, or if no flattening filter is in place for the x-ray beams; and

(iv) A display shall be provided at the treatment control panel showing a fault indicator when the interlock system has prevented irradiation. The fault indicator will identify a filter or foil error.

(4) Stray Radiation in the Useful Beam. For equipment manufactured after the effective date of these rules, the registrant shall determine during acceptance testing, or obtain from the manufacturer, data sufficient to ensure that x-ray stray radiation in the useful electron beam, absorbed dose at the surface during x-ray irradiation and stray neutron radiation in the useful x-ray beam meet applicable acceptance criteria.

(5) Beam Monitors. Therapeutic radiation machines subject to R313-30-7 shall be provided with redundant beam monitoring systems. The sensors for these systems shall be fixed in the useful beam during treatment to indicate the dose monitor unit rate, and to monitor other beam parameters.

(a) Equipment manufactured after the effective date of these rules shall be provided with at least two independently powered integrating dose meters. Alternatively, common elements may be used if the production of radiation is terminated upon failure of a common element.

(b) Equipment manufactured on or before the effective date of these rules shall be provided with at least one radiation detector. This detector shall be incorporated into a useful beam monitoring system;

(c) The detector and the system into which that detector is incorporated shall meet the following requirements:

(i) Detectors shall be removable only with tools and, if movable, shall be interlocked to prevent incorrect positioning;

(ii) Detectors shall form part of a beam monitoring system from whose readings in dose monitor units the absorbed dose at a reference point can be calculated;

(iii) The beam monitoring systems shall be capable of independently monitoring, interrupting, and terminating irradiation; and

(iv) For equipment manufactured after the effective date of these rules, the design of the beam monitoring systems shall ensure that the:

(A) Malfunctioning of one system shall not affect the correct functioning of the secondary system; and

(B) Failure of an element common to both systems which could affect the correct function of both systems shall terminate irradiation or prevent the initiation of radiation.

(v) Beam monitoring systems shall have a legible display at the treatment control panel. For equipment manufactured after the effective date of these rules, displays shall:

(A) Maintain a reading until intentionally reset;

(B) Have only one scale and no electrical or mechanical scale multiplying factors;

(C) Utilize a design so that increasing dose monitor units are displayed by increasing numbers; and

(D) In the event of power failure, the dose monitor units delivered up to the time of failure, or the beam monitoring information required in R313-30-7(5)(c)(v)(C) displayed at the control panel at the time of failure shall be retrievable in at least one system for a 20 minute period of time.

(6) Beam Symmetry.

(a) Bent-beam linear accelerators subject to R313-30-7 shall be provided with auxiliary devices to monitor beam symmetry;

(b) The devices referenced in R313-30-7(6)(a) shall be able to detect field asymmetry greater than ten percent; and

(c) The devices referenced in R313-30-7(6)(a) shall be configured to terminate irradiation if the specifications in R313-30-7(6)(b) can not be maintained.

(7) Selection and Display of Dose Monitor Units.

(a) Irradiation shall not be possible until a selection of a number of dose monitor units has been made at the treatment control panel;

(b) The preselected number of dose monitor units shall be displayed at the treatment control panel until reset manually for the next irradiation;

(c) After termination of irradiation, it shall be necessary to reset the dosimeter display before subsequent treatment can be initiated; and

(d) For equipment manufactured after the effective date of these rules, after termination of irradiation, it shall be necessary for the operator to reset the preselected dose monitor units before irradiation can be initiated.

(8) Air Kerma Rate and Absorbed Dose Rate. For equipment manufactured after the effective date of these rules, a system shall be provided from whose readings the air kerma rate or absorbed dose rate at a reference point can be calculated. The radiation detectors specified in R313-30-7(5) may form part of this system. In addition:

(a) The dose monitor unit dose rate shall be displayed at the treatment control panel;

(b) If the equipment can deliver an air kerma rate or absorbed dose rate at the nominal treatment distance more than twice the maximum value specified by the manufacturer, a device shall be provided which terminates irradiation when the air kerma rate or absorbed dose rate exceeds a value twice the specified maximum. The dose rate at which the irradiation will be terminated shall be a record maintained by the registrant;

(c) If the equipment can deliver, under any fault condition, an air kerma rate or absorbed dose rate at the nominal treatment distance more than ten times the maximum value specified by the manufacturer, a device shall be provided to prevent the air kerma rate or absorbed dose rate anywhere in the radiation field from exceeding twice the specified maximum value and to terminate irradiation if the excess absorbed dose at the nominal treatment distance exceeds 4 Gy (400 rad); and

(d) For therapeutic radiation machines, the registrant shall determine, or obtain from the manufacturer, the maximum values specified in R313-30-7(8)(b) and R313-30-7(8)(c) for the specified operating conditions. Records of these maximum values shall be maintained at the installation for inspection by representatives of the Director.

(9) Termination of Irradiation by the Beam Monitoring System or Systems During Stationary Beam Radiation Therapy.

(a) Primary systems shall terminate irradiation when the preselected number of dose monitor units has been detected by the system;

(b) If the original design of the equipment included a secondary dose monitoring system, that system shall be capable of terminating irradiation when not more than 15 percent or 40 dose monitor units above the preselected number of dose monitor units set at the control panel has been detected by the secondary dose monitoring system; and

(c) For equipment manufactured after the effective date of these rules, an indicator on the control panel shall show which monitoring system has terminated irradiation.

(10) Termination Switches. It shall be possible to terminate irradiation and equipment movement or go from an interruption condition to termination condition at any time from the operator's position at the treatment control panel.

(11) Interruption Switches. If a therapeutic radiation machine has an interrupt mode, it shall be possible to interrupt irradiation and equipment movements at any time from the treatment control panel. Following an interruption, it shall be possible to restart irradiation by operator action without a reselection of operating conditions. If a change is made of a pre-selected value during an interruption, irradiation and equipment movements shall be automatically terminated.

(12) Timer. A suitable irradiation control device shall be provided to terminate the irradiation after a preset time interval.

(a) A timer shall be provided which has a display at the treatment control panel. The timer shall have a preset time selector and an elapsed time indicator;

(b) The timer shall be a cumulative timer which activates with an indication of "BEAM-ON" and retains its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the elapsed time indicator;

(c) The timer shall terminate irradiation when a preselected time has elapsed, if the dose monitoring systems have not previously terminated irradiation.

(13) Selection of Radiation Type. Equipment capable of both x-ray therapy and electron therapy shall meet the following additional requirements:

(a) Irradiation shall not be possible until a selection of radiation type (x-rays or electrons) has been made at the treatment control panel;

(b) The radiation type selected shall be displayed at the treatment control panel before and during irradiation;

(c) An interlock system shall be provided to ensure that the equipment can principally emit only the radiation type which has been selected;

(d) An interlock system shall be provided to prevent irradiation with x-rays, except to obtain a verification film, when electron applicators are fitted;

(e) An interlock system shall be provided to prevent irradiation with electrons when accessories specific for x-ray therapy are fitted; and

(f) An interlock system shall be provided to prevent irradiation if selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment control panel.

(14) Selection of Energy. Equipment capable of generating radiation beams of different energies shall meet the

following requirements:

(a) Irradiation shall not be possible until a selection of energy has been made at the treatment control panel;

(b) The nominal energy value selected shall be displayed at the treatment control panel before and during irradiation; and

(c) Irradiation shall not be possible until the appropriate flattening filter or scattering foil for the selected energy is in its proper location.

(15) Selection of Stationary Beam Radiation Therapy or Moving Beam Radiation Therapy. Therapeutic radiation machines capable of both stationary beam radiation therapy and moving beam radiation therapy shall meet the following requirements:

(a) Irradiation shall not be possible until a selection of stationary beam radiation therapy or moving beam radiation therapy has been made at the treatment control panel;

(b) The mode of operation shall be displayed at the treatment control panel;

(c) An interlock system shall be provided to ensure that the equipment can operate only in the mode which has been selected;

(d) An interlock system shall be provided to prevent irradiation if a selected parameter in the treatment room does not agree with the selected parameter at the treatment control panel;

(e) Moving beam radiation therapy shall be controlled to obtain the selected relationships between incremental dose monitor units and incremental angle of movement. For equipment manufactured after the effective date of these rules:

(i) An interlock system shall be provided to terminate irradiation if the number of dose monitor units delivered in increments of ten degrees of rotation or one centimeter of motion differs by more than 20 percent from the selected value;

(ii) Where angle terminates the irradiation in moving beam radiation therapy, the dose monitor units shall differ by less than five percent from the dose monitor unit value selected;

(iii) An interlock shall be provided to prevent motion of more than five degrees or one centimeter beyond the selected limits during moving beam radiation therapy;

(iv) For equipment manufactured after the effective date of these rules, an interlock shall be provided to require that a selection of direction be made at the treatment control panel in units which are capable of both clockwise and counter-clockwise moving beam radiation therapy.

(v) Moving beam radiation therapy shall be controlled with both primary position sensors and secondary position sensors to obtain the selected relationships between incremental dose monitor units and incremental movement.

(f) Where the beam monitor system terminates the irradiation in moving beam radiation therapy, the termination of irradiation shall be as required by R313-30-7(9); and

(g) For equipment manufactured after the effective date of these rules, an interlock system shall be provided to terminate irradiation if movement:

(i) Occurs during stationary beam radiation therapy; or

(ii) Does not start or stops during moving beam radiation therapy unless the stoppage is a preplanned function.

(16) Facility Design Requirements for Therapeutic Radiation Machines Operating above 500 kV. In addition to shielding adequate to meet requirements of R313-30-9, the following design requirements are made:

(a) Protective Barriers. Protective barriers shall be fixed, except for access doors to the treatment room or movable beam interceptors;

(b) Control Panel. In addition to other requirements specified in R313-30, the control panel shall also:

(i) Be located outside the treatment room;

(ii) Provide an indication of whether electrical power is available at the control panel and if activation of the radiation is possible;

(iii) Provide an indication of whether radiation is being produced; and

(iv) Include an access control device which will prevent unauthorized use of the therapeutic radiation machine;

(c) Viewing Systems. Windows, mirrors, closed-circuit television or an equivalent viewing system shall be provided to permit continuous observation of the patient following positioning and during irradiation and shall be so located that the operator may observe the patient from the treatment control panel. The therapeutic radiation machine shall not be used for patient irradiation unless at least one viewing system is operational;

(d) Aural Communications. Provision shall be made for continuous two-way aural communication between the patient and the operator at the control panel. The therapeutic radiation machine shall not be used for irradiation of patients unless continuous two-way aural communication is possible;

(e) Room Entrances. Treatment room entrances shall be provided with warning lights in a readily observable position near the outside of access doors, which will indicate when the useful beam is "ON;"

(f) Entrance Interlocks. Interlocks shall be provided so that access controls are activated before treatment can be initiated or continued. If the radiation beam is interrupted by an access control, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel;

(g) Beam Interceptor Interlocks. If the shielding material in a protective barrier requires the presence of a beam interceptor to ensure compliance with R313-30-301(1), interlocks shall be provided to prevent the production of radiation, unless the beam interceptor is in place, whenever the useful beam is directed at the designated barriers;

(h) Emergency Cutoff Switches. At least one emergency power cutoff switch shall be located in the radiation therapy room and shall terminate equipment electrical power including radiation and mechanical motion. This switch is in addition to the termination switch required by R313-30-7(11). Emergency power cutoff switches shall include a manual reset so that the therapeutic radiation machine cannot be restarted from the unit's control panel without resetting the emergency cutoff switch. Alternatively, power cannot be restarted without pressing a RESET button in the treatment room after resetting the power breaker, and the operator shall check the treatment room and patient prior to turning the power back on;

(i) Safety Interlocks. Safety interlocks shall be designed so that defects or component failures in the safety interlock system prevent or terminate operation of the therapeutic radiation machine; and

(j) Surveys for Residual Radiation. Surveys for residual activity shall be conducted on therapeutic radiation machines capable of generating photon and electron energies above 10 MV prior to machining, removing, or working on therapeutic radiation machine components which may have become activated due to photo-neutron production.

(17) Radiation Therapy Physicist Support.

(a) The services of a Radiation Therapy Physicist shall be required in facilities having therapeutic radiation machines with energies of 500 kV and above. The Radiation Therapy Physicist shall be responsible for:

(i) Full calibrations required by R313-30-7(19) and protection surveys required by R313-30-4(1);

(ii) Supervision and review of dosimetry;

(iii) Beam data acquisition and transfer for computerized dosimetry, and supervision of its use;

(iv) Quality assurance, including quality assurance check review required by R313-30-7(20)(e) of these rules;

(v) Consultation with the authorized user in treatment planning, as needed; and

(vi) Perform calculations and assessments regarding misadministrations.

(b) If the Radiation Therapy Physicist is not a full-time employee of the registrant, the operating procedures required by R313-30-7(18) shall also specifically address how the Radiation Therapy Physicist is to be contacted for problems or emergencies, as well as the specific actions to be taken until the Radiation Therapy Physicist can be contacted.

(18) Operating Procedures.

(a) No individual, other than the patient, shall be in the treatment room during treatment or during an irradiation for testing or calibration purposes;

(b) Therapeutic radiation machines shall not be made available for medical use unless the requirements of R313-30-4(1), R313-30-7(19) and R313-30-7(20) have been met;

(c) Therapeutic radiation machines, when not in operation, shall be secured to prevent unauthorized use;

(d) If a patient must be held in position during treatment, mechanical supporting or restraining devices shall be used;

(e) A copy of the current operating and emergency procedures shall be maintained at the therapeutic radiation machine control console; and

(f) When adjustable beam limiting devices or beam limiting devices that do not contact the skin are used, the position and shape of the radiation field shall be indicated by a light field.

(19) Full Calibration Measurements.

(a) Full calibration of a therapeutic radiation machine subject to R313-30-7 shall be performed by, or under the direct supervision of, a Radiation Therapy Physicist:

(i) Before the first medical use following installation or reinstallation of the therapeutic radiation machine;

(ii) Annually. The intervals should not exceed 12 months and shall not exceed 13 months; and

(iii) Before medical use under the following conditions:

(A) Whenever quality assurance check measurements indicate that the radiation output differs by more than five percent from the value obtained at the last full calibration and the difference cannot be easily reconciled; and

(B) Following component replacement, major repair, or modification of components, if the appropriate Quality Assurance checks demonstrate that the characteristics of the radiation beam have been significantly affected as determined by a Radiation Therapy Physicist. The Quality Assurance checks shall be performed by, or under the direct supervision of a Radiation Therapy Physicist. The determination of the need for a full calibration shall be made by a Radiation Therapy Physicist.

(iv) Notwithstanding the requirements of R313-30-7(19)(a)(iii):

(A) Full calibration of therapeutic radiation machines with multi-energy and multi-mode capabilities is required only for those modes and energies that are not within their range and the difference cannot be easily reconciled; and

(B) If the repair, replacement or modification does not affect all modes and energies, full calibration shall be performed on the effected mode or energy if the Quality Assurance checks demonstrate that the characteristics of the radiation beam have been significantly affected as determined by a Radiation Therapy Physicist. The Quality Assurance checks shall be performed by, or under the direct supervision of, a Radiation Therapy Physicist. The determination of the need for a full calibration shall be made by a Radiation Therapy Physicist. The remaining energies or modes may be validated with quality assurance check procedures against the criteria in R313-30-7(19)(a)(iii)(A).

(b) To satisfy the requirement of R313-30-7(19)(a), full calibration shall include measurements required for annual calibration by American Association of Physicists in Medicine (AAPM) Report 46, "Comprehensive Quality Assurance for Radiation Oncology," 1994 ed., which is adopted and incorporated by reference;

(c) The registrant shall use the dosimetry system described in R313-30-8(6) to measure the radiation output for one set of exposure conditions. The remaining radiation measurements required in R313-30-7(19)(b) may then be made using a dosimetry system that indicates relative dose rates; and

(d) The registrant shall maintain a record of calibrations for the duration of the registration. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine, and the signature of the Radiation Therapy Physicist responsible for performing the calibration.

(20) Periodic Quality Assurance Checks.

(a) Periodic quality assurance checks shall be performed on therapeutic radiation machines subject to R313-30-7. These checks should be performed at intervals not to exceed those intervals recommended in American Association of Physicists in Medicine (AAPM) Report 46, "Comprehensive Quality Assurance for Radiation Oncology," 1994 ed., which is adopted and incorporated by reference.

(i) Determination of parameters for central axis radiation output shall be done at least weekly. The interval shall not exceed ten days.

(ii) The interval at which periodic quality assurance checks are to be performed shall be determined by the Radiation Therapy Physicist and shall be documented in the registrant's quality management program. The interval for a specific performance check may be based on the history of that performance check for a particular machine. The interval may be increased above the recommended limits only if the Radiation Therapy Physicist determines the increase is justified based on the history of the performance check for that machine or a machine of the same manufacturer and the same model.

(iii) If the performance check demonstrates a need to decrease the interval, the Radiation Therapy Physicist shall decide if the interval should be decreased. The decreased interval shall be continued until the performance check demonstrates that the decreased interval is not necessary.

(b) To satisfy the requirement of R313-30-7(20)(a), quality assurance checks shall include determination of central axis radiation output and shall include a representative sampling of periodic quality assurance checks contained in American Association of Physicists in Medicine (AAPM) Report 46, "Comprehensive Quality Assurance for Radiation Oncology," 1994 ed., which is adopted and incorporated by reference.

(i) A representative sampling shall include those referenced periodic quality assurance checks necessary to assure that the radiation beam and alignment parameters for all therapy machines and modes of operation are within limits prescribed by AAPM Report 46.

(ii) The intervals for a representative sampling of referenced periodic quality assurance checks should not exceed 12 consecutive months and shall not exceed 13 consecutive months.

(c) The registrant shall use a dosimetry system which has been inter-compared semi-annually. The intervals should not exceed six months and shall not exceed seven months, with a dosimetry system described in R313-30-8(6)(a) to make the periodic quality assurance checks required in R313-30-7(20)(a)(i);

(d) The registrant shall perform periodic quality assurance checks required by R313-30-7(20)(a) in accordance with procedures established by the Radiation Therapy Physicist;

(e) The registrant shall review the results of periodic radiation output checks according to the following procedures:

(i) The authorized user and Radiation Therapy Physicist shall be immediately notified if a parameter is not within its acceptable range. The therapeutic radiation machine shall not be made available for subsequent medical use until the Radiation Therapy Physicist has determined that all parameters are within their acceptable range;

(ii) If periodic radiation output check parameters appear to be within their acceptable range, the periodic radiation output check shall be reviewed and signed by either the authorized user or Radiation Therapy Physicist within two weeks;

(iii) The Radiation Therapy Physicist shall review and sign the results of radiation output quality assurance checks at intervals not to exceed one month; and

(iv) Other Quality Assurance checks shall be reviewed at intervals specified in the Quality Management Program, as required by R313-30-5.

(f) Therapeutic radiation machines subject to R313-30-7 shall have safety quality assurance checks of external beam radiation therapy facilities performed weekly at intervals not to exceed ten days;

(g) To satisfy the requirement of R313-30-7(20)(f), safety quality assurance checks shall ensure proper operation of:

(i) Electrical interlocks at external beam radiation therapy room entrances;

(ii) Proper operation of the "BEAM-ON", interrupt and termination switches;

(iii) Beam condition indicator lights on the access doors, control console, and in the radiation therapy room;

(iv) Viewing and aural communication systems;

(v) Electrically operated treatment room doors from inside and outside the treatment room;

(vi) At least one emergency power cutoff switch. If more than one emergency power cutoff switch is installed and not all switches are tested at once, switches shall be tested on a rotating basis. Safety quality assurance checks of the emergency power cutoff switches may be conducted at the end of the treatment day in order to minimize possible stability problems with the therapeutic radiation machine.

(h) The registrant shall promptly repair a system identified in R313-30-7(20)(g) that is not operating properly; and

(i) The registrant shall maintain a record of quality assurance checks required by R313-30-7(20)(a) and R313-30-7(20)(g) for three years. The record shall include the date of the quality assurance check, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the manufacturer's name, model number and serial number of the instruments used to measure the radiation output of the therapeutic radiation machine, and the signature of the individual who performed the periodic quality assurance check.

R313-30-8. Calibration and Check of Survey Instruments and Dosimetry Equipment.

(1) The registrant shall ensure that the survey instruments used to show compliance with R313-30 have been calibrated before first use, at intervals not to exceed 12 months, and following repair.

(2) To satisfy the requirements of R313-30-8(1), the registrant shall:

(a) Calibrate required scale readings up to 10 mSv (1000 mrem) per hour with an appropriate radiation source that is traceable to the National Institute of Standards and Technology (NIST);

(b) Calibrate at least two points on the scales to be calibrated. These points should be at approximately 1/3 and 2/3 of scale rating; and

(3) To satisfy the requirements of R313-30-8(2), the registrant shall:

(a) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than ten percent; and

(b) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than 20 percent if a correction factor or graph is conspicuously attached to the instrument.

(4) The registrant shall retain a record of calibrations required in R313-30-8(1) for three years. The record shall include:

(a) A description of the calibration procedure; and

(b) A description of the source used and the certified dose rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration, and the date of calibration.

(5) The registrant may obtain the services of individuals licensed by the Board, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform calibrations of survey instruments. Records of calibrations which contain information required by R313-30-8(4) shall be maintained by the registrant.

(6) Dosimetry Equipment.

(a) The registrant shall have a calibrated dosimetry system available for use. The system shall have been calibrated for by the National Institute for Standards and Technology (NIST) or by an American Association of Physicists in Medicine (AAPM) Accredited Dosimetry Calibration Laboratory (ADCL). The calibration shall have been performed within 24 months prior to use and after servicing that may have affected system calibration.

(i) For beams with energies greater than 1 MV (1 MeV), the dosimetry system shall have been calibrated for Cobalt-60;

(ii) For beams with energies equal to or less than 1 MV (1 MeV), the dosimetry system shall have been calibrated at an energy or energy range appropriate for the radiation being used.

(b) The registrant shall have available for use a dosimetry system for quality assurance check measurements. To meet this requirement, the system may be compared with a system that has been calibrated in accordance with R313-30-8(6)(a). This comparison shall have been performed within the previous 12 months (six months if the dosimetry system is an ionization chamber) and after servicing that may have affected system calibration. The quality assurance check system may be the same system used to meet the requirement in R313-30-8(6)(a);

(c) The registrant shall maintain a record of dosimetry system calibration, intercomparison, and comparison for the duration of the license and registration. For calibrations, intercomparisons, or comparisons, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by R313-30-8(6)(a) and R313-30-8(6)(b), the correction factors that were determined, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the calibration, intercomparison, or comparison was performed by, or under the direct supervision of, a Radiation Therapy Physicist.

R313-30-9. Shielding and Safety Design Requirements.

(1) Therapeutic radiation machines subject to R313-30-6 or R313-30-7 shall be provided with the primary and secondary barriers that are necessary to ensure compliance with R313-15-201 and R313-30-301 of these rules.

(2) Facility design information for new installations of a therapeutic radiation machine or installations of a therapeutic radiation machine of higher energy into a room not previously approved for that energy shall be submitted for approval by the Director prior to actual installation of the therapeutic radiation machine. The minimum facility design information that must be submitted is contained in R313-30-10.

R313-30-10. Information on Radiation Shielding Required for Plan Reviews.

(1) Therapeutic Radiation Machines

(a) Basic facility information including: name, telephone number and Department registration number of the individual responsible for preparation of the shielding plan; name and telephone number of the facility supervisor; and the street address, including room number, of the external beam radiation therapy facility. The plan should also indicate whether this is a new structure or a modification to existing structures.

(b) Wall, floor, and ceiling areas struck by the useful beam shall have primary barriers. For an adjacent area that is normally unoccupied, barrier thicknesses may be less than the required thickness, if:

(i) That area where the exposure rates and exposures exceed the limits specified in R313-15-301(1) is permanently fenced or walled to prevent access;

(ii) The appropriate warning signs are posted at appropriate intervals and locations on the fence or wall;

(iii) The exposure rates and exposures outside the fence or wall are less than the limits specified in R313-15-301(1);

(iv) Access to the area is controlled by the operator, and once access is gained, the therapeutic radiation machine cannot be operated until the area has been cleared and access is again controlled by the operator;

(v) The ceiling is of sufficient thickness to reduce exposure due to skyshine, so that the exposure rates and exposures surrounding the facility are less than the limits specified in R313-15-301(1); and

(vi) The primary barrier is of sufficient thickness to ensure that the exposure rates and exposures from the primary beam in spaces in adjacent buildings are less than the limits specified in R313-15-301(1).

(c) Secondary barriers shall be provided in wall, floor, and ceiling areas not having primary barriers.

(2) Therapeutic Radiation Machines up to 150 kV (photons only). In addition to the requirements listed in R313-30-10(1), therapeutic radiation machine facilities which produce only photons with a maximum energy less than or equal to 150 kV shall submit shielding plans which contain, as a minimum, the following additional information:

(a) Equipment specifications, including the manufacturer and model number of the therapeutic radiation machine, as well as the maximum technique factors.

(b) Maximum design workload for the facility including total weekly radiation output, expressed in gray (rad) or air kerma at one meter, total beam-on time per day or week, the average treatment time per patient, along with the anticipated number of patients to be treated per day or week.

(c) A facility blueprint or drawing indicating: the scale of the blueprint or drawing; direction of North; normal location of the therapeutic radiation machine's radiation ports; the port's travel and traverse limits; general directions of the useful beam; locations of windows and doors; and the location of the therapeutic radiation machine control panel. If the control panel is located inside the external beam radiation therapy treatment room, the location of the operator's booth shall be noted on the plan and the operator's station at the control panel shall be behind a protective barrier sufficient to ensure compliance with R313-15-101 of these rules.

(d) The structural composition and thickness or the lead or concrete equivalent of walls, doors, partitions, floor, and ceiling of the rooms concerned.

(e) The type of occupancy of adjacent areas inclusive of space above and below the rooms concerned. If there is an exterior wall, show distance to the closest areas where it is likely that individuals may be present.

(f) At least one example calculation which shows the methodology used to determine the amount of shielding required for the physical conditions; that is the primary and secondary or leakage barriers, restricted and unrestricted areas, entry doors; and shielding material in the facility.

(i) If commercial software is used to generate shielding requirements, please also identify the software used and the version or revision date.

(ii) If the software used to generate shielding requirements is not in the open literature, please also submit quality control sample calculations to verify the result obtained with the software.

(3) Therapeutic Radiation Machines over 150 kV. In addition to the requirements listed in R313-30-10(1), therapeutic radiation machine facilities which produce photons with a maximum energy in excess of 150 kV and electrons and protons or other subatomic particles shall submit shielding plans which contain, as a minimum, the following additional information:

(a) Equipment specifications including the manufacturer and model number of the therapeutic radiation machine, and gray (rad) at the isocenter and the energies and types of radiation produced, that is photon and electron. The source to isocenter distance shall be specified.

(b) Maximum design workload for the facility including total weekly radiation output, expressed in gray (rad) at one meter, total beam-on time per day or week, the average treatment time per patient, along with the anticipated number of patients to be treated per day or week.

(c) Facility blueprint or drawing, including both floor plan and elevation views, indicating relative orientation of the therapeutic radiation machine; scale; types; thickness and minimum density of shielding materials; direction of North; the locations and size of penetrations through shielding barriers, ceiling, walls and floor; as well as details of the doors and maze.

(d) The structural composition and thickness or concrete equivalent of walls, doors, partitions, floor, and ceiling of the rooms concerned.

(e) The type of occupancy of adjacent areas inclusive of space above and below the rooms concerned. If there is an exterior wall, show distance to the closest areas where it is likely that individuals may be present.

(f) Description of assumptions that were used in shielding calculations including, but not limited to; design energy, for example a room may be designed for 6 MV unit although only a 4 MV unit is currently proposed; workload; presence of integral beam-stop in unit; occupancy and uses of adjacent areas; fraction of time that useful beam will intercept permanent barriers, walls, floor and ceiling; and "allowed" radiation exposure in both restricted and unrestricted areas.

(g) At least one example calculation which shows the methodology used to determine the amount of shielding required for the physical conditions; that is the primary and secondary or leakage barriers, restricted and unrestricted areas, small angle scatter, entry doors and maze; and shielding material in the facility.

(i) If commercial software is used to generate shielding requirements, also identify the software used and the version or revision date.

(ii) If the software used to generate shielding requirements is not in the open literature, also submit quality control sample calculations to verify the result obtained with the software.

(4) Neutron Shielding. In addition to the requirements listed in R313-30-10(3), therapeutic radiation machine facilities which are capable of operating above 10 MV shall submit shielding plans which contain, as a minimum, the following additional information:

(a) The structural composition, thickness, minimum density and location of neutron shielding material.

(b) Description of assumptions that were used in neutron shielding calculations including, but not limited to, neutron

spectra as a function of energy, neutron flux rate, absorbed dose and dose equivalent, due to neutrons, in both restricted and unrestricted areas.

(c) At least one example calculation which shows the methodology used to determine the amount of neutron shielding required for the physical conditions, that is, restricted and unrestricted areas, entry doors and maze and neutron shielding material utilized in the facility.

(i) If commercial software is used to generate shielding requirements, also identify the software used and the version or revision date.

(ii) If the software used to generate shielding requirements is not in the open literature, also submit quality control sample calculations to verify the result obtained with the software.

(d) The methods and instrumentation which will be used to verify the adequacy of neutron shielding installed in the facility.

KEY: x-rays, survey, radiation, radiation safety
March 19, 2013 19-3-104
Notice of Continuation October 4, 2013

R313. Environmental Quality, Radiation Control.
R313-38. Licenses and Radiation Safety Requirements for Well Logging.
R313-38-1. Purpose and Authority.

(1) Rule R313-38 prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well. This rule also prescribes radiation safety requirements for persons using licensed materials in these operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6).

(3) The provisions and requirements of Rule R313-38 are in addition to, and not in substitution for, the other requirements of these rules. In particular, the provisions of Rules R313-15, R313-18, R313-19, and R313-22 apply to applicants and licensees subject to these rules.

R313-38-2. Scope.

(1) The requirements of Rule R313-38 do not apply to the issuance of a license authorizing the use of licensed material in tracer studies involving multiple wells, such as field flooding studies, or to the use of sealed sources auxiliary to well logging but not lowered into wells.

R313-38-3. Clarifications or Exceptions.

For purposes of Rule R313-38, 10 CFR 39 (2008), is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: 39.1, 39.5, 39.8, 39.11, 39.101, and 39.103;

(2) The exclusion of the following 10 CFR references within 10 CFR 39: Sec. 40.32, and Sec. 70.33;

(3) The exclusion of "licensed material" in 10 CFR 39.2 definitions;

(4) The substitution of the following wording:

(a) License for reference to NRC license;

(b) Utah Radiation Control Rules for the references to:

(i) The Commission's regulations;

(ii) The NRC regulations;

(iii) NRC regulations; and

(iv) Pertinent Federal regulations;

(c) Director for reference to Commission, except as stated in Subsection R313-38-3(4)(d);

(d) Representatives of the Director for the references to the Commission in:

(i) 10 CFR 39.33(d);

(ii) 10 CFR 39.35(a);

(iii) 10 CFR 39.37;

(iv) 10 CFR 39.39(b); and

(v) 10 CFR 39.67(f);

(e) Director or the Director for references to:

(i) NRC in:

(A) 10 CFR 39.63(l);

(B) 10 CFR 39.77(c)(1)(i) and (ii); and

(C) 10 CFR 39.77(d)(9); and

(ii) Appropriate NRC Regional Office in:

(A) 10 CFR 39.77(a);

(B) 10 CFR 39.77(c)(1); and

(C) 10 CFR 39.77(d);

(f) Director, the U.S. Nuclear Regulatory Commission or an Agreement State for the references to:

(i) Commission or an Agreement State in:

(A) 10 CFR 39.35(b); and

(B) 10 CFR 39.43(d) and (e); and

(ii) Commission pursuant to Sec. 39.13(c) or by an Agreement State in:

(A) 10 CFR 39.43(c); and

(B) 10 CFR 39.51;

(g) In 10 CFR 39.35(d)(1), persons specifically licensed by the Director, the U.S. Nuclear Regulatory Commission, or an Agreement State for the reference to an NRC or Agreement State licensee that is authorized; and

(h) In 10 CFR 39.35(d)(2), reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208, for the reference to the following statement:

(i) The licensee shall submit a report to the appropriate NRC Regional Office listed in appendix D of part 20 of this chapter, within 5 days of receiving the test results. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source, and the corrective actions taken up to the time the report is made; and

(i) In 10 CFR 39.75(e), a U.S. Nuclear Regulatory Commission or an Agreement State for the reference to the Agreement State;

(5) The substitution of the following Title R313 references for specific 10 CFR references:

(a) Section R313-12-3 for the reference to Sec. 20.1003 of this chapter;

(b) Section R313-12-54 for the reference to 10 CFR 39.17;

(c) Subsection R313-12-55(1) for the reference to 10 CFR 39.91;

(d) Rule R313-15 for references to:

(i) Part 20; and

(ii) Part 20 of this chapter;

(e) Subsection R313-15-901(1) for the reference to Sec. 20.1901(a);

(f) Section R313-15-906 for the reference to Sec. 20.205 of this chapter;

(g) Sections R313-15-1201 through R313-15-1203 for the references to:

(i) Secs. 20.2201-20.2202; and

(ii) Sec. 20.2203;

(h) Rule R313-18 for the reference to part 19;

(i) Section R313-19-30 for the reference to Sec. 150.20 of this chapter;

(j) Section R313-19-50 for the references to:

(i) Sec. 30.50; and

(ii) Part 21 of this chapter;

(k) Section R313-19-71 for the reference to Sec. 30.71;

(l) Section R313-19-100 for the references to:

(i) 10 CFR Part 71; and

(ii) Sec. 71.5 of this chapter; and

(m) Section R313-22-33 for the reference to 10 CFR 30.33;

KEY: radioactive material, well logging, surveys, subsurface tracer studies
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Notice of Continuation October 7, 2013 19-3-108

R317. Environmental Quality, Water Quality.
R317-6. Ground Water Quality Protection.
R317-6-1. Definitions.

"Aquifer" means a geologic formation, group of geologic formations or part of a geologic formation that contains sufficiently saturated permeable material to yield usable quantities of water to wells and springs.

"Background Concentration" means the concentration of a pollutant in ground water upgradient or lateral hydraulically equivalent point from a facility, practice or activity which has not been affected by that facility, practice or activity.

"Best Available Technology" means the application of design, equipment, work practice, operation standard or combination thereof at a facility to effect the maximum reduction of a pollutant achievable by available processes and methods taking into account energy, public health, environmental and economic impacts and other costs.

"Best Available Technology Standard" means a performance standard or pollutant concentration achievable through the application of best available technology.

"Board" means the Utah Water Quality Board.

"Class TDS Limit" means the upper boundary of the TDS range for an applicable class as specified in Section R317-6-3.

"Community Drinking Water System" means a public drinking water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

"Comparable Quality (Source)" means a potential alternative source or sources of water supply which has the same general quality as the ground water source.

"Comparable Quantity (Source)" means a potential alternative source of water supply capable of reliably supplying water in quantities sufficient to meet the year-round needs of the users served by the ground water source.

"Compliance Monitoring Point" means a well, seep, spring, or other sampling point used to determine compliance with applicable permit limits.

"Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

"Conventional Treatment" means normal and usual treatment of water for distribution in public drinking water supply systems including flocculation, sedimentation, filtration, disinfection and storage.

"Discharge" means the release of a pollutant directly or indirectly into subsurface waters of the state.

"Existing Facility" means a facility or activity that was in operation or under construction after August 14, 1989 and before February 10, 1990.

"Economically Infeasible" means, in the context of a public drinking water source, the cost to the typical water user for replacement water would exceed the community's ability to pay.

"Facility" means any building, structure, processing, handling, or storage facility, equipment or activity; or contiguous group of buildings, structures, or processing, handling or storage facilities, equipment, or activities or combination thereof.

"Gradient" means the change in total water pressure head per unit of distance.

"Ground Water" means subsurface water in the zone of saturation including perched ground water.

"Ground Water Quality Standards" means numerical contaminant concentration levels adopted by the Board in or under R317-6-2 for the protection of the subsurface waters of the State.

"Infiltration" means the movement of water from the land surface into the pores of rock, soil or sediment.

"Institutional Constraints" means legal or other restrictions that preclude replacement water delivery and which cannot be alleviated through administrative procedures or market transactions.

"Interim Action Reports For Petroleum Releases" means plans prepared specifically to document cleanup of petroleum releases resulting primarily from transportation spills not regulated by the Division of Solid and Hazardous Waste or Division of Environmental Response and Remediation that are submitted to the local health department and should include the following information: map of the location where the spill occurred, sketch of where confirmation samples were collected, quantity of fuel spilled, quantity of soil removed, soil disposal location, certified laboratory analysis report including total petroleum hydrocarbons (TPH) analyzed in the appropriate molecular weight range, and actions taken to control the source and protect public safety, public health, and water quality.

"Lateral Hydraulically Equivalent Point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water at that point has not been affected by the facility.

"Limit of Detection" means the concentration of a chemical below which it can not be detected using currently accepted sampling and analytical techniques for drinking water as determined by the U.S. Environmental Protection Agency.

"Local Health Department" means a city-county or multi-county local health department established under Title 26A.

"New Facility" means a facility for which construction or modification is initiated after February 9, 1990.

"Non Sensitive Area" means industrial and manufacturing areas previously contaminated and areas not likely to affect human health and exceed groundwater standards or background concentrations.

"Permit Limit" means a ground water pollutant concentration limitation specified in a Ground Water Discharge Permit and may include protection levels, class TDS limits, ground water quality standards, alternate concentration limits, permit-specific ground water quality standards, or limits stipulated in the application and use of best available technology. For facilities permitted by rule under R317-6-6.2, a permit limit is a ground water pollutant concentration limitation specified in R317-6-6.2.B.

"Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the federal, state, or local government.

"Point of Discharge" means the area within outermost location at which effluent or leachate has been stored, applied, disposed of, or discharged; for a diked facility, the outermost edge of the dikes.

"Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, munitions, trash, chemical wastes, petroleum hydrocarbons, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into waters of the state.

"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.

"Professional Engineer" means any person qualified to practice engineering before the public in the state of Utah and professionally registered as required under the Professional Engineers and Professional Land Surveyors Licensing Act rules (UAC 156-22).

"Professional Geologist" means any person qualified to practice geology before the public in the State of Utah and professionally registered as required under the Professional

Geologist Licensing Act rules (UAC R156-76).

"Protection Level" means the ground water pollutant concentration levels specified in R317-6-4.

"Sensitive Area" means those areas that are located near residences, waters of the state, wetlands, or any area where exposure to humans or significant environmental impact is likely to occur.

"Substantial Treatment" means treatment of water utilizing specialized treatment methods including ion exchange, reverse osmosis, electrodialysis and other methods needed to upgrade water quality to meet standards for public water systems.

"Technology Performance Monitoring" means the evaluation of a permitted facility to determine compliance with best available technology standards.

"Total Dissolved Solids (TDS)" means the quantity of dissolved material in a sample of water which is determined by weighing the solid residue obtained by evaporating a measured volume of a filtered sample to dryness; or for many waters that contain more than 1000 mg/l, the sum of the chemical constituents.

"Radius of Influence" means the radial distance from the center of a well bore to the point where there is no lowering of the water table or potentiometric surface because of pumping of the well; the edge of the cone of depression.

"Upgradient" means a point located hydraulically above a facility such that the ground water at that point has not been impacted by discharges from the facility.

"Vadose Zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

"Waste" see "Pollutant."

"Water Table" means the top of the saturated zone of a body of unconfined ground water at which the pressure is equal to that of the atmosphere.

"Water Table Aquifer" means an aquifer extending downward from the water table to the first confining bed.

"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 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.

"Zone of Influence" means the area contained by the outer edge of the drawdown cone of a water well.

R317-6-2. Ground Water Quality Standards.

2.1 The following Ground Water Quality Standards as listed in Table I are adopted for protection of ground water quality.

TABLE 1
GROUND WATER QUALITY STANDARDS

Parameter	Milligrams per liter (mg/l) unless noted otherwise and based on analysis of filtered sample except for Mercury and organic compounds
PHYSICAL CHARACTERISTICS	
Color (units)	15.0
Corrosivity (characteristic)	noncorrosive
Odor (threshold number)	3.0
pH (units)	6.5-8.5
INORGANIC CHEMICALS	
Bromate	0.01
Chloramine (as Cl_2)	4
Chlorine (as Cl_2)	4
Chlorine Dioxide	0.8
Chlorite	1.0
Cyanide (free)	0.2
Fluoride	4.0
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Total Nitrate/Nitrite (as N)	10.0
METALS	
Antimony	0.006
Asbestos (fibers/l and > 10 microns in length)	$7.0x10^6$
Arsenic	0.05
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0.015
Mercury	0.002
Selenium	0.05
Silver	0.1
Thallium	0.002
Zinc	5.0
ORGANIC CHEMICALS	
Pesticides and PCBs	
Alachlor	0.002
Aldicarb	0.003
Aldicarb sulfone	0.002
Aldicarb sulfoxide	0.004
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon (sodium salt)	0.2
Dibromochloropropane (DBCP)	0.0002
2, 4-D	0.07
Dichlorophenoxyacetic acid (2, 4-) (2,4D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated Biphenyls	0.0005
Simazine	0.004
Toxaphene	0.003
2, 4, 5-TP (Silvex)	0.05
VOLATILE ORGANIC CHEMICALS	
Benzene	0.005
Benzo (a) pyrene (PAH)	0.0002
Carbon tetrachloride	0.005
1, 2 - Dichloroethane	0.005
1, 1 - Dichloroethylene	0.007
1, 1, 1-Trichloroethane	0.200
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) phthalate	0.006
Dioxin (2,3,7,8-TCDD)	0.00000003
para - Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
cis-1,2 dichloroethylene	0.07
trans-1,2 dichloroethylene	0.1
1,2 Dichloropropane	0.005
Ethylbenzene	0.7
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Trichlorobenzene (1,2,4-)	0.07
Trichloroethane (1,1,1-)	0.2
Trichloroethane (1,1,2-)	0.005
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (Total)	10
OTHER ORGANIC CHEMICALS	
Five Haloacetic Acids (HAA5)	0.06

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     (Monochloroacetic acid)
     (Dichloroacetic acid)
     (Trichloroacetic acid)
     (Bromoacetic acid)
     (Dibromoacetic acid)
Total Trihalomethanes (TTHM)                    0.08

RADIONUCLIDES
     The following are the maximum contaminant levels for
Radium-226 and Radium-228, and gross alpha particle
radioactivity, beta particle radioactivity, photon
radioactivity, and uranium concentration:

Combined Radium-226 and Radium-228              5pCi/l

Gross alpha particle activity,
including Radium-226 but
excluding Radon and Uranium                    15pCi/l

Uranium                                        0.030 mg/l

Beta particle and photon radioactivity
     The average annual concentration from man-made
radionuclides of beta particle and photon radioactivity
from man-made radionuclides shall not produce an annual
dose equivalent to the total body or any internal organ
greater than four millirem/year.
     Except for the radionuclides listed below, the
concentration of man-made radionuclides causing four
millirem total body or organ dose equivalents shall be
calculated on the basis of a two liter per day drinking
water intake using the 168 hour data listed in "Maximum
Permissible Body Burden and Maximum Permissible Concentration
Exposure", NBS Handbook 69 as amended August 1962, U.S.
Department of Commerce.  If two or more radionuclides are
present, the sum of their annual dose equivalent to the total
body or to any organ shall not exceed four millirem/year.
     Average annual concentrations assumed to produce a
total body or organ dose of four millirem/year:
    Radionuclide          Critical Organ           pCi per liter

     Tritium               Total Body               20,000
     Strontium-90          Bone Marrow                   8
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2.2 A permit specific ground water quality standard for any pollutant not specified in Table 1 may be established by the Director at a level that will protect public health and the environment. This permit limit may be based on U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk based contaminant levels, standards established by other regulatory agencies and other relevant information.

R317-6-3. Ground Water Classes.

3.1 GENERAL

The following ground water classes are established: Class IA - Pristine Ground Water; Class IB - Irreplaceable Ground Water; Class IC - Ecologically Important Ground Water; Class II - Drinking Water Quality Ground Water; Class III - Limited Use Ground Water; Class IV - Saline Ground Water.

3.2 CLASS IA - PRISTINE GROUND WATER

Class IA ground water has the following characteristics:

A. Total dissolved solids of less than 500 mg/l.

B. No contaminant concentrations that exceed the ground water quality standards listed in Table 1.

3.3 CLASS IB - IRREPLACEABLE GROUND WATER

Class IB ground water is a source of water for a community public drinking water system for which no reliable supply of comparable quality and quantity is available because of economic or institutional constraints.

3.4 CLASS IC - ECOLOGICALLY IMPORTANT GROUND WATER

Class IC ground water is a source of ground water discharge important to the continued existence of wildlife habitat.

3.5 CLASS II - DRINKING WATER QUALITY GROUND WATER

Class II ground water has the following characteristics:

A. Total dissolved solids greater than 500 mg/l and less than 3000 mg/l.

B. No contaminant concentrations that exceed ground water quality standards in Table 1.

3.6 CLASS III - LIMITED USE GROUND WATER

Class III ground water has one or both of the following characteristics:

A. Total dissolved solids greater than 3000 mg/l and less than 10,000 mg/l, or;

B. One or more contaminants that exceed the ground water quality standards listed in Table 1.

3.7 CLASS IV - SALINE GROUND WATER

Class IV ground water has total dissolved solids greater than 10,000 mg/l.

R317-6-4. Ground Water Class Protection Levels.

4.1 GENERAL

A. Protection levels are ground water pollutant concentration limits, set by ground water class, for the operation of facilities that discharge or would probably discharge to ground water.

B. For the physical characteristics (color, corrosivity, odor, and pH) and radionuclides listed in Table 1, the values listed are the protection levels for all ground water classes.

4.2 CLASS IA PROTECTION LEVELS

A. Class IA ground water will be protected to the maximum extent feasible from degradation due to facilities that discharge or would probably discharge to ground water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard value, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration, 0.25 times the ground water quality standard, or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.3 CLASS IB PROTECTION LEVELS

A. Class IB ground water will be protected as an irreplaceable source of drinking water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 2000mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.4 CLASS IC PROTECTION LEVELS

Class IC ground water will be protected as a source of water for potentially affected wildlife habitat. Limits on increases of total dissolved solids and organic and inorganic chemical compounds will be determined in order to meet applicable surface water standards.

4.5 CLASS II PROTECTION LEVELS

A. Class II ground water will be protected for use as drinking water or other similar beneficial use with conventional treatment prior to use.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background value or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.25 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration, 0.25 times the ground water quality standard, or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.6 CLASS III PROTECTION LEVELS

A. Class III ground water will be protected as a potential source of drinking water, after substantial treatment, and as a source of water for industry and agriculture.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background concentration level or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.5 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.5 times the background concentration or 0.5 times the ground water quality standard or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard. If the background concentration exceeds the ground water quality standard no increase will be allowed.

4.7 CLASS IV PROTECTION LEVELS

Protection levels for Class IV ground water will be established to protect human health and the environment.

R317-6-5. Ground Water Classification for Aquifers.

5.1 GENERAL

A. When sufficient information is available, entire aquifers or parts thereof may be classified by the Board according to the quality of ground water contained therein and commensurate protection levels will be applied.

B. Ground water sources furnishing water to community drinking water systems with ground water meeting Class IA criteria are classified as Class IA.

5.2 CLASSIFICATION AND RECLASSIFICATION PROCEDURE

A. The Board may initiate classification or reclassification.

B. A petition for classification or reclassification must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

C. Boundaries for class areas will be delineated so as to enclose distinct ground water classes as nearly as known facts permit. Boundaries will be based on hydrogeologic properties, existing ground water quality and for Class IB and IC, current use. Parts of an aquifer may be classified differently.

D. The petitioner requesting reclassification will provide sufficient information to determine if reclassification is in the best interest of the beneficial users.

E. A petition for classification or reclassification shall include:

1. factual data supporting the proposed classification;

2. a description of the proposed ground waters to be classified or reclassified;

3. potential contamination sources;

4. ground water flow direction;

5. current beneficial uses of the ground water; and

6. location of all water wells in the area to be classified or reclassified.

F. One or more public hearings will be held to receive comment on classification and reclassification proposals.

G. The Board will determine the disposition of all petitions for classification and reclassification, except as provided in R317-6-5.2.H.

H. Ground water proximate to a facility for which an application for a ground water discharge permit has been made may be classified by the Director for purposes of making permitting decisions.

R317-6-6. Implementation.

6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Director. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to: land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the division before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the division that a ground water discharge permit is required.

C. No person may construct, install, or operate any new liquid waste storage facility or modify an existing or new liquid waste storage facility for a large animal feeding operation not permitted by rule under R317-6-6.2A.17, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, without a ground water discharge permit from the Director. A ground water discharge permit application should be submitted at least 180 days before the permit is needed and the applicant must comply with the requirements of R317-1-2 for submitting plans and specifications and obtaining a construction permit.

6.2 GROUND WATER DISCHARGE PERMIT BY RULE

A. Except as provided in R317-6-6.2.C, the following facilities are considered to be permitted by rule and are not required to obtain a discharge permit under R317-6-6.1 or comply with R317-6-6.3 through R317-6-6.7, R317-6-6.9 through R317-6-6.11, R317-6-6.13, R317-6-6.16, R317-6-6.17 and R317-6-6.18:

1. facilities with effluent or leachate which has been demonstrated to the satisfaction of the Director to conform and will not deviate from the applicable class TDS limits, ground water quality standards, protection levels or other permit limits and which does not contain any contaminant that may present a threat to human health, the environment or its potential beneficial uses of the ground water. The Director may require

samples to be analyzed for the presence of contaminants before the effluent or leachate discharges directly or indirectly into ground water. If the discharge is by seepage through natural or altered natural materials, the Director may require samples of the solution be analyzed for the presence of pollutants before or after seepage;

2. water used for watering of lawns, gardens, or shrubs or for irrigation for the revegetation of a disturbed land area except for the direct land application of wastewater;

3. application of agricultural chemicals including fertilizers, herbicides and pesticides including but not limited to, insecticides fungicides, rodenticides and fumigants when used in accordance with current scientifically based manufacturer's recommendations for the crop, soil, and climate and in accordance with state and federal statutes, regulations, rules, permits, and orders adopted to avoid ground water pollution;

4. water used for irrigated agriculture except for the direct land application of wastewater from municipal, industrial or mining facilities;

5. flood control systems including detention basins, catch basins and wetland treatment facilities used for collecting or conveying storm water runoff;

6. natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining or metallurgical process;

7. leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

8. wells and facilities regulated under the underground injection control (UIC) program;

9. land application of livestock wastes, within expected crop nitrogen uptake;

10. individual subsurface wastewater disposal systems approved by local health departments or large subsurface wastewater disposal systems approved by the Director;

11. produced water pits, and other oil field waste treatment, storage, and disposal facilities regulated by the Division of Oil, Gas, and Mining in accordance with Section 40-6-5(3)(d) and R649-9, Disposal of Produced Water;

12. reserve pits regulated by the Division of Oil, Gas and Mining in accordance with Section 40-6-5(3)(a) and R649-3-7, Drilling and Operating Practices;

13. storage tanks installed or operated under rules adopted by the Utah Solid and Hazardous Waste Control Board;

14. coal mining operations or facilities regulated under the Coal Mining and Reclamation Act by the Utah Division of Oil, Gas, and Mining (DOGM). The submission of an application for ground water discharge permit under R317-6-6.2.C may be required only if the Director, after consideration of recommendations, if any, by DOGM, determines that the discharge violates applicable ground water quality standards, applicable Class TDS limits, or is interfering with a reasonable foreseeable beneficial use of the ground water. DOGM is not required to establish any administrative or regulatory requirements which are in addition to the rules of DOGM for coal mining operations or facilities to implement these ground water rules;

15. hazardous waste or solid waste management units managed or undergoing corrective action under R315-1 through R315-14;

16. solid waste landfills permitted under the requirements of R315-303;

17. animal feeding operations, as defined in UAC R317-8-3.5(2) that use liquid waste handling systems, which are not located within Zone 1 (100 feet) for wells in a confined aquifer or Zone 2 (250 day time of travel) for wells and springs in unconfined aquifers, in accordance with the Public Drinking Water Regulations UAC R309-600, and which meet either of the following criteria:

a) operations constructed prior to the effective date of this rule which incorporated liquid waste handling systems and which are either less than 4 million gallons capacity or serve fewer than 1000 animal units, or

b. operations with fewer than the following numbers of confined animals:

i. 1,500 slaughter and feeder cattle,

ii. 1,050 mature dairy cattle, whether milked or dry cows,

iii. 3,750 swine each weighing over 25 kilograms (approximately 55 pounds),

iv. 18,750 swine each weighing 25 kilograms or less (approximately 55 pounds),

v. 750 horses,

vi. 15,000 sheep or lambs,

vii. 82,500 turkeys,

viii. 150,000 laying hens or broilers that use continuous overflow watering but dry handle wastes,

ix. 45,000 hens or broilers,

x. 7,500 ducks, or

xi. 1,500 animal units

18. animal feeding operations, as defined in UAC R317-8-3.5(2), which do not utilize liquid waste handling systems;

19. mining, processing or milling facilities handling less than 10 tons per day of metallic and/or nonmetallic ore and waste rock, not to exceed 2500 tons/year in aggregate unless the processing or milling uses chemical leaching;

20. pipelines and above-ground storage tanks;

21. drilling operations for metallic minerals, nonmetallic minerals, water, hydrocarbons, or geothermal energy sources when done in conformance with applicable rules of the Utah Division of Oil, Gas, and Mining or the Utah Division of Water Rights;

22. land application of municipal sewage sludge for beneficial use, at or below the agronomic rate and in compliance with the requirements of 40 CFR 503, July 1, 2000 edition;

23. land application of municipal sewage sludge for mine-reclamation at a rate higher than the agronomic rate and in compliance with 40 CFR 503, July 1, 2000 edition;

24. municipal wastewater treatment lagoons receiving no wastewater from a significant industrial discharger as defined in R317-8-8.2(12); and

25. facilities and modifications thereto which the Director determines after a review of the application will have a de minimis actual or potential effect on ground water quality.

B. No facility permitted by rule under R317-6-6.2.A may cause ground water to exceed ground water quality standards or the applicable class TDS limits in R317-6-3.1 to R317-6-3.7. If the background concentration for affected ground water exceeds the ground water quality standard, the facility may not cause an increase over background. This section, R317-6-6.2B. does not apply to facilities undergoing corrective action under R317-6-6.15A.3.

C. The submission of an application for a ground water discharge permit may be required by the Director for any discharge permitted by rule under R317-6-6.2 if it is determined that the discharge may be causing or is likely to cause increases above the ground water quality standards or applicable class TDS limits under R317-6-3 or otherwise is interfering or may interfere with probable future beneficial use of the ground water.

6.3 APPLICATION REQUIREMENTS FOR A GROUND WATER DISCHARGE PERMIT

Unless otherwise determined by the Director, the application for a permit to discharge wastes or pollutants to ground water shall include the following complete information:

A. The name and address of the applicant and the name and address of the owner of the facility if different than the applicant. A corporate application must be signed by an officer

of the corporation. The name and address of the contact, if different than above, and telephone numbers for all listed names shall be included.

B. The legal location of the facility by county, quarter-quarter section, township, and range.

C. The name of the facility and the type of facility, including the expected facility life.

D. A plat map showing all water wells, including the status and use of each well, Drinking Water source protection zones, topography, springs, water bodies, drainages, and man-made structures within a one-mile radius of the discharge. The plat map must also show the location and depth of existing or proposed wells to be used for monitoring ground water quality. Identify any applicable Drinking Water source protection ordinances and their impacts on the proposed permit.

E. Geologic, hydrologic, and agricultural description of the geographic area within a one-mile radius of the point of discharge, including soil types, aquifers, ground water flow direction, ground water quality, aquifer material, and well logs.

F. The type, source, and chemical, physical, radiological, and toxic characteristics of the effluent or leachate to be discharged; the average and maximum daily amount of effluent or leachate discharged (gpd), the discharge rate (gpm), and the expected concentrations of any pollutant (mg/l) in each discharge or combination of discharges. If more than one discharge point is used, information for each point must be given separately.

G. Information which shows that the discharge can be controlled and will not migrate into or adversely affect the quality of any other waters of the state, including the applicable surface water quality standards, that the discharge is compatible with the receiving ground water, and that the discharge will comply with the applicable class TDS limits, ground water quality standards, class protection levels or an alternate concentration limit proposed by the facility.

H. For areas where the ground water has not been classified by the Board, information on the quality of the receiving ground water sufficient to determine the applicable protection levels.

I. A proposed sampling and analysis monitoring plan which conforms to EPA Guidance for Quality Assurance Project Plans, EPA QA/G-5 (EPA/600/R-98/018, February 1998) and includes a description, where appropriate, of the following:

1. ground water monitoring to determine ground water flow direction and gradient, background quality at the site, and the quality of ground water at the compliance monitoring point;

2. installation, use and maintenance of monitoring devices;

3. description of the compliance monitoring area defined by the compliance monitoring points including the dimensions and hydrologic and geologic data used to determine the dimensions;

4. monitoring of the vadose zone;

5. measures to prevent ground water contamination after the cessation of operation, including post-operational monitoring;

6. monitoring well construction and ground water sampling which conform where applicable to the Handbook of Suggested Practices for Design and Installation of Ground-Water Monitoring Wells (EPA/600/4-89/034, March 1991), ASTM Standards on Ground Water and Vadose Investigations (1996), Practical Guide for Ground Water Sampling EPA/600/2-85/104, (November 1985) and RCRA Ground Water Monitoring Technical Enforcement Guidance Document (1986), unless otherwise specified by the Director;

7. description and justification of parameters to be monitored;

8. quality assurance and control provisions for monitoring data.

J. The plans and specifications relating to construction, modification, and operation of discharge systems.

K. The description of the ground water most likely to be affected by the discharge, including water quality information of the receiving ground water prior to discharge, a description of the aquifer in which the ground water occurs, the depth to the ground water, the saturated thickness, flow direction, porosity, hydraulic conductivity, and flow systems characteristics.

L. The compliance sampling plan which in addition to the information specified in the above item I includes, where appropriate, provisions for sampling of effluent and for flow monitoring in order to determine the volume and chemistry of the discharge onto or below the surface of the ground and a plan for sampling compliance monitoring points and appropriate nearby water wells. Sampling and analytical methods proposed in the application must conform with the most appropriate methods specified in the following references unless otherwise specified by the Director:

1. Standard Methods for the Examination of Water and Wastewater, twentieth edition, 1998; Library of Congress catalogue number: ISBN: 0-87553-235-7.

2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4-79-020.

3. Techniques of Water Resource Investigations of the U.S. Geological Survey, (1998); Book 9.

4. Monitoring requirements in 40 CFR parts 141 and 142, 2000 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 2000 ed.

5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD-2777, U.S. Government Printing Office Stock Number 024-001-03489-1.

M. A description of the flooding potential of the discharge site, including the 100-year flood plain, and any applicable flood protection measures.

N. Contingency plan for regaining and maintaining compliance with the permit limits and for reestablishing best available technology as defined in the permit.

O. Methods and procedures for inspections of the facility operations and for detecting failure of the system.

P. For any existing facility, a corrective action plan or identification of other response measures to be taken to remedy any violation of applicable ground water quality standards, class TDS limits or permit limit established under R317-6-6.4E. which has resulted from discharges occurring prior to issuance of a ground water discharge permit.

Q. Other information required by the Director.

R. All applications for a groundwater discharge permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

S. A closure and post closure management plan demonstrating measures to prevent ground water contamination during the closure and post closure phases of an operation.

6.4 ISSUANCE OF DISCHARGE PERMIT

A. The Director may issue a ground water discharge permit for a new facility if the Director determines, after reviewing the information provided under R317-6-6.3, that:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards protection levels, and permit limits established under R317-6-6.4E will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant is using best available technology to minimize the discharge of any pollutant; and

4. there is no impairment of present and future beneficial uses of the ground water.

B. The Director may approve an alternate concentration limit for a new facility if:

1. The applicant submits a petition for an alternate

concentration limit showing the extent to which the discharge will exceed the applicable class TDS limits, ground water standards or applicable protection levels and demonstrates that:

a. the facility is to be located in an area of Class III ground water;

b. the discharge plan incorporates the use of best available technology;

c. the alternate concentration limit is justified based on substantial overriding social and economic benefits; and,

d. the discharge would pose no threat to human health and the environment.

2. One or more public hearings have been held by the Director in nearby communities to solicit comment.

C. The Director may issue a ground water discharge permit for an existing facility provided:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards and protection levels will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant utilizes treatment and discharge minimization technology commensurate with plant process design capability and similar or equivalent to that utilized by facilities that produce similar products or services with similar production process technology; and,

4. there is no current or anticipated impairment of present and future beneficial uses of the ground water.

D. The Director may approve an alternate concentration limit for a pollutant in ground water at an existing facility or facility permitted by rule under R317-6-6.2 if the applicant for a ground water discharge permit shows the extent the discharge exceeds the applicable class TDS limits, ground water quality standards and applicable protection levels that correspond to the otherwise applicable ground water quality standards and demonstrates that:

1. steps are being taken to correct the source of contamination, including a program and timetable for completion;

2. the pollution poses no threat to human health and the environment; and

3. the alternate concentration limit is justified based on overriding social and economic benefits.

E. An alternate concentration limit, once adopted by the Director under R317-6-6.4B or R317-6-6.4D, shall be the pertinent permit limit.

F. A facility permitted under this provision shall meet applicable class TDS limits, ground water quality standards, protection levels and permit limits.

G. The Director may modify a permit for a new facility to reflect standards adopted as part of corrective action.

6.5 NOTICE OF INTENT TO ISSUE A GROUND WATER DISCHARGE PERMIT

The Director shall publish a notice of intent to approve in a newspaper in the affected area and shall allow at least 30 days, and no longer than 60 days, in which interested persons may comment to the Director. Final action will be taken by the Director following the comment period.

6.6 PERMIT TERM

A. The ground water discharge permit term will run for 5 years from the date of issuance. Permits may be renewed for 5-year periods or extended for a period to be determined by the Director but not to exceed 5 years.

B. In the event that new ground water quality standards are adopted by the Board, permits may be reopened to extend the terms of the permit or to include pollutants covered by new standards. The holder of a permit may apply for a variance under the conditions outlined in R317-6-6.4.D.

6.7 GROUND WATER DISCHARGE PERMIT RENEWAL

The permittee for a facility with a ground water discharge permit must apply for a renewal or extension for a ground water discharge permit at least 180 days prior to the expiration of the existing permit. If a permit expires before an application for renewal or extension is acted upon by the Director, the permit will continue in effect until it is renewed, extended or denied. Permit renewals with significant changes to the original permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

6.8 TERMINATION OF A GROUND WATER DISCHARGE PERMIT BY THE DIRECTOR

A ground water discharge permit may be terminated or a renewal denied by the Director if one of the following applies:

A. noncompliance by the permittee with any condition of the permit where the permittee has failed to take appropriate action in a timely manner to remedy the permit violation;

B. the permittee's failure in the application or during the permit approval process to disclose fully all significant relevant facts at any time;

C. a determination that the permitted facility endangers human health or the environment and can only be regulated to acceptable levels by plan modification or termination; or

D. the permittee requests termination of the permit.

6.9 PERMIT COMPLIANCE MONITORING

A. Ground Water Monitoring

The Director may include in a ground water discharge permit requirements for ground water monitoring, and may specify compliance monitoring points where the applicable class TDS limits, ground water quality standards, protection levels or other permit limits are to be met.

The Director will determine the location of the compliance monitoring point based upon the hydrology, type of pollutants, and other factors that may affect the ground water quality. The distance to the compliance monitoring points must be as close as practicable to the point of discharge. The compliance monitoring point shall not be beyond the property boundaries of the permitted facility without written agreement of the affected property owners and approval by the Director.

B. Performance Monitoring

The Director may include in a ground water discharge permit requirements for monitoring performance of best available technology standards.

6.10 BACKGROUND WATER QUALITY DETERMINATION

A. Background water quality contaminant concentrations shall be determined and specified in the ground water discharge permit. The determination of background concentration shall take into account any degradation.

B. Background water quality contaminant concentrations may be determined from existing information or from data collected by the permit applicant. Existing information shall be used, if the permit applicant demonstrates that the quality of the information and its means of collection are adequate to determine background water quality. If existing information is not adequate to determine background water quality, the permit applicant shall submit a plan to determine background water quality to the Director for approval prior to data collection. One or more up-gradient, lateral hydraulically equivalent point, or other monitoring wells as approved by the Director may be required for each potential discharge site.

C. After a permit has been issued, permittee shall continue to monitor background water quality contaminant concentrations in order to determine natural fluctuations in concentrations. Applicable up-gradient, and on-site ground water monitoring data shall be included in the ground water quality permit monitoring report.

6.11 NOTICE OF COMMENCEMENT AND DISCONTINUANCE OF GROUND WATER DISCHARGE

OPERATIONS

A. The permittee shall notify the Division of Water Quality immediately upon commencement of the ground water discharge and submit a written notice within 30 days of the commencement of the discharge.

B. The permittee shall notify the Division of Water Quality of the date and reason for discontinuance of ground water discharge within 30 days.

6.12 SUBMISSION OF DATA

A. Laboratory Analyses

All laboratory analysis of samples collected to determine compliance with these rules shall be performed in accordance with standard procedures by the Utah Division of Laboratory Services or by a laboratory certified by the Utah Department of Health.

B. Field Analyses

All field analyses to determine compliance with these rules shall be conducted in accordance with standard procedures specified in R317-6-6.3.L.

C. Periodic Submission of Monitoring Reports

Results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results shall be periodically reported to the Director according to the schedule specified in the ground water discharge permit.

6.13 REPORTING OF MECHANICAL PROBLEMS OR DISCHARGE SYSTEM FAILURES

The permittee shall notify the Director within 24 hours of the discovery of any mechanical or discharge system failures that could affect the chemical characteristics or volume of the discharge. A written statement confirming the oral report shall be submitted to the Director within five days of the failure.

6.14 CORRECTION OF ADVERSE EFFECTS REQUIRED

A. If monitoring or testing indicates that the permit conditions may be or are being violated by ground water discharge operations or the facility is otherwise in an out-of-compliance status, the permittee shall promptly make corrections to the system to correct all violations of the discharge permit.

B. The permittee, operator, or owner may be required to take corrective action as described in R317-6-6.15 if a pollutant concentration has exceeded a permit limit.

6.15 CORRECTIVE ACTION

It is the intent of the Board that the provisions of these rules should be considered when making decisions under any state or federal superfund action; however, the protection levels are not intended to be considered as applicable, relevant or appropriate clean-up standards under such other regulatory programs.

A. Application of R317-6-6.15

1. Generally - R317-6-6.15 shall apply to any person who discharges pollutants into ground water in violation of Section 19-5-107, or who places or causes to be placed any wastes in a location where there is probable cause to believe they will cause pollution of ground water in violation of Section 19-5-107.

2. Corrective Action shall include, except as otherwise provided in R317-6-6.15, preparation of a Contamination Investigation and preparation and implementation of a Corrective Action Plan.

3. The procedural provisions of R-317-6-6.15 shall not apply to any facility where a corrective or remedial action for ground water contamination, that the Director determines meets the substantive standards of this rule, has been initiated under any other state or federal program. Corrective or remedial action undertaken under the programs specified in Table 2 are considered to meet the substantive standards of this rule unless otherwise determined by the Director.

TABLE 2
PROGRAM

Leaking Underground Storage Tank, Sections 19-6-401, et seq.

Federal Comprehensive Environmental Response, Compensation andLiability Act, 42 U.S.C. Sections 9601, et seq.

Hazardous Waste Mitigation Act, Sections 19-6-301 et seq.
Utah Solid and Hazardous Waste Act, Sections 19-6-101 et seq.

B. Notification and Interim Action

1. Notification - A person who spills or discharges any petroleum hydrocarbon or other substance which may cause pollution of ground waters in violation of Section 19-5-107 shall notify the Director within 24 hours of the spill or discharge. A written notification shall be submitted to the Director within five days after the spill or discharge.

2. Interim Actions - A person is encouraged to take immediate, interim action without following the steps outlined in R317-6-6.15 if such action is required to control a source of pollutants. Interim action is also encouraged if required to protect public safety, public health and welfare and the environment, or to prevent further contamination that would result in costlier clean-up. Such interim actions should include source abatement and control, neutralization, or other actions as appropriate. A person that has taken these actions shall remain subject to R317-6-6.15 after the interim actions are completed unless he demonstrates that:

a. no pollutants have been discharged into ground water in violation of 19-5-107; and

b. no wastes remain in a location where there is probable cause to believe they will cause pollution of ground water in violation of 19-5-107, unless, in the case of diesel fuel and oil releases over 25 gallons, the responsible person demonstrates that the pollutant will not affect ground water quality by complying with the following:

(1) remove contaminated soil to the extent possible, or to established background levels, or 500 mg/kg total petroleum hydrocarbons for sensitive areas, or 5000 mg/kg total petroleum hydrocarbons for non sensitive areas as defined by R317-6-1;

(2) collect soil samples at locations and depths sufficient to document that cleanup has been achieved or as directed by the local health department;

(3) treat or dispose contaminated soil at a location approved by the local health department;

(4) submit an interim action report as defined by R317-6-1.23 or as directed by the local health department.

C. Contamination Investigation and Corrective Action Plan - General

1. The Director may require a person that is subject to R317-6-6.15 to submit for the Director's approval a Contamination Investigation and Corrective Action Plan, and may require implementation of an approved Corrective Action Plan. A person subject to this rule who has been notified that the Director is exercising his or her authority under R317-6-6.15 to require submission of a Contamination Investigation and Corrective Action Plan, shall, within 30 days of that notification, submit to the Director a proposed schedule for those submissions, which may include different deadlines for different elements of the Investigation and Plan. The Director may accept, reject, or modify the proposed schedule.

2. The Contamination Investigation or the Corrective Action Plan may, in order to meet the requirements of this Part, incorporate by reference information already provided to the Director in the Contingency Plan or other document.

3. The requirements for a Contamination Investigation and a Corrective Action Plan specified in R317-6-6.15.D are comprehensive. The requirements are intended to be applied with flexibility, and persons subject to this rule are encouraged to contact the Director's staff to assure its efficient application on a site-specific basis.

4. The Director may waive any or all Contamination Investigation and Corrective Action Plan requirements where

the person subject to this rule demonstrates that the information that would otherwise be required is not necessary to the Director's evaluation of the Contamination Investigation or Corrective Action Plan. Requests for waiver shall be submitted to the Director as part of the Contamination Investigation or Corrective Action Plan, or may be submitted in advance of those reports.

D. Contamination Investigation and Corrective Action Plan - Requirements

1. Contamination Investigation - The contamination investigation shall include a characterization of pollution, a characterization of the facility, a data report, and, if the Corrective Action Plan proposes standards under R317-6-6.15.F.2. or Alternate Corrective Action Concentration Limits higher than the ground water quality standards, an endangerment assessment.

a. The characterization of pollution shall include a description of:

(1) The amount, form, concentration, toxicity, environmental fate and transport, and other significant characteristics of substances present, for both ground water contaminants and any contributing surficial contaminants;

(2) The areal and vertical extent of the contaminant concentration, distribution and chemical make-up; and

(3) The extent to which contaminant substances have migrated and are expected to migrate.

b. The characterization of the facility shall include descriptions of:

(1) Contaminant substance mixtures present and media of occurrence;

(2) Hydrogeologic conditions underlying and, upgradient and downgradient of the facility;

(3) Surface waters in the area;

(4) Climatologic and meteorologic conditions in the area of the facility; and

(5) Type, location and description of possible sources of the pollution at the facility;

(6) Groundwater withdrawals, pumpage rates, and usage within a 2-mile radius.

c. The report of data used and data gaps shall include:

(1) Data packages including quality assurance and quality control reports;

(2) A description of the data used in the report; and

(3) A description of any data gaps encountered, how those gaps affect the analysis and any plans to fill those gaps.

d. The endangerment assessment shall include descriptions of any risk evaluation necessary to support a proposal for a standard under R317-6-6.15.F.2 or for an Alternate Corrective Action Concentration Limit.

e. The Contamination Investigation shall include such other information as the Director requires.

2. Proposed Corrective Action Plan

The proposed Corrective Action Plan shall include an explanation of the construction and operation of the proposed Corrective Action, addressing the factors to be considered by the Director as specified in R317-6-6.15.E. and shall include such other information as the Director requires. It shall also include a proposed schedule for completion.

3. The Contaminant Investigation and Corrective Action Plan must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

E. Approval of the Corrective Action Plan

After public notice in a newspaper in the affected area and a 30-day period for opportunity for public review and comment, the Director shall issue an order approving, disapproving, or modifying the proposed Corrective Action Plan. The Director shall consider the following factors and criteria in making that decision:

1. Completeness and Accuracy of Corrective Action Plan.

The Director shall consider the completeness and accuracy of the Corrective Action Plan and of the information upon which it relies.

2. Action Protective of Public Health and the Environment

a. The Corrective Action shall be protective of the public health and the environment.

b. Impacts as a result of any off-site activities shall be considered under this criterion (e.g., the transport and disposition of contaminated materials at an off-site facility).

3. Action Meets Concentration Limits

The Corrective Action shall meet Corrective Action Concentration Limits specified in R317-6-6.15.F, except as provided in R317-6-6.15.G.

4. Action Produces a Permanent Effect

a. The Corrective Action shall produce a permanent effect.

b. If the Corrective Action Plan provides that any potential sources of pollutants are to be controlled in place, any cap or other method of source control shall be designed so that the discharge from the source following corrective action achieves ground water quality standards or, if approved by the Director, alternate corrective action concentration limits (ACACLs). For purposes of this paragraph, sources of pollutants are controlled "in place" even though they are moved within the facility boundaries provided that they are not moved to areas with unaffected ground water.

5. Action May Use Other Additional Measures

The Director may consider whether additional measures should be included in the Plan to better assure that the criteria and factors specified in R317-6-6.15.E are met. Such measures may include:

a. Requiring long-term ground water or other monitoring;

b. Providing environmental hazard notices or other security measures;

c. Capping of sources of ground water contamination to avoid infiltration of precipitation;

d. Requiring long-term operation and maintenance of all portions of the Corrective Action; and

e. Periodic review to determine whether the Corrective Action is protective of public health and the environment.

F. Corrective Action Concentration Limits

1. Contaminants with specified levels

Corrective Actions shall achieve ground water quality standards or, where applicable, alternate corrective action concentration limits (ACACLs).

2. Contaminants without specified levels

For contaminants for which no ground water quality standard has been established, the proposed Corrective Action Plan shall include proposed Corrective Action Concentration Limits. These levels shall be approved, disapproved or modified by the Director after considering U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk-based contaminant levels or standards established by other regulatory agencies and other relevant information.

G. Alternate Corrective Action Concentration Limits

An Alternate Corrective Action Concentration Limit that is higher or lower than the Corrective Action Concentration Limits specified in R317-6-6.15.F may be required as provided in the following:

1. Higher Alternate Corrective Action Concentration Limits

A person submitting a proposed Corrective Action Plan may request approval by the Director of an Alternate Corrective Action Concentration Limit higher than the Corrective Action Concentration Limit specified in R317-6-6.15.F. The proposed limit shall be protective of human health, and the environment, and shall utilize best available technology. The Corrective Action Plan shall include the following information in support of this request:

a. The potential for release and migration of any contaminant substances or treatment residuals that might remain after Corrective Action in concentrations higher than Corrective Action Concentration Limits;

b. An evaluation of residual risks, in terms of amounts and concentrations of contaminant substances remaining following implementation of the Corrective Action options evaluated, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate such contaminants substances and their constituents; and

c. Any other information necessary to determine whether the conditions of R317-6-6.15.G have been met.

2. Lower Alternate Corrective Action Concentration Limits

The Director may require use of an Alternate Corrective Action Concentration Limit that is lower than the Corrective Action Concentration Limit specified in R317-6-6.15.F if necessary to protect human health or the environment. Any person requesting that the Director consider requiring a lower Alternate Corrective Action Concentration Limit shall provide supporting information as described in R317-6-6.15.G.3.

3. Protective of human health and the environment

The Alternate Corrective Action Concentration Limit must be protective of human health and the environment. In making this determination, the Director may consider:

a. Information presented in the Contamination Investigation;

b. Other relevant cleanup or health standards, criteria, or guidance;

c. Relevant and reasonably available scientific information;

d. Any additional information relevant to the protectiveness of a Corrective Action; and

e. The impact of additional proposed measures, such as those described in R317-6-6.15.E.5.

4. Good cause

An Alternate Corrective Action Concentration Limit shall not be granted without good cause.

a. The Director may consider the factors specified in R317-6-6.15.E in determining whether there is good cause.

b. The Director may also consider whether the proposed remedy is cost-effective in determining whether there is good cause. Costs that may be considered include but are not limited to:

(1) Capital costs;

(2) Operation and maintenance costs;

(3) Costs of periodic reviews, where required;

(4) Net present value of capital and operation and maintenance costs;

(5) Potential future remedial action costs; and

(6) Loss of resource value.

5. Conservative

An Alternate Corrective Action Concentration Limit that is higher than the Corrective Action Concentration Limits specified in R317-6-6.15.F must be conservative. The Director may consider the concentration level that can be achieved using best available technology if attainment of the Corrective Action Concentration Limit is not technologically achievable.

6. Relation to background and existing conditions

a. The Director may consider the relationship between the Corrective Action Concentration Limits and background concentration limits in considering whether an Alternate Corrective Action Concentration Limit is appropriate.

b. No Alternate Corrective Action Concentration Limit higher than existing ground water contamination levels or ground water contamination levels projected to result from existing conditions will be granted.

6.16 OUT-OF-COMPLIANCE STATUS

A. Accelerated Monitoring for Probable Out-of-Compliance Status

If the value of a single analysis of any compliance parameter in any compliance monitoring sample exceeds an applicable permit limit, the facility shall:

1. Notify the Director in writing within 30 days of receipt of data;

2. Immediately initiate monthly sampling if the value exceeds both the background concentration of the pollutant by two standard deviations and an applicable permit limit, unless the Director determines that other periodic sampling is appropriate, for a period of two months or until the compliance status of the facility can be determined.

B. Violation of Permit Limits

Out-of-compliance status exists when:

1. The value for two consecutive samples from a compliance monitoring point exceeds:

a. one or more permit limits; and

b. the background concentration for that pollutant by two standard deviations (the standard deviation and background (mean) being calculated using values for the ground water pollutant at that compliance monitoring point) unless the existing permit limit was derived from the background pollutant concentration plus two standard deviations; or

2. the concentration value of any pollutant in two or more consecutive samples is statistically significantly higher than the applicable permit limit. The statistical significance shall be determined using the statistical methods described in Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, Vol. 53, No. 196 of the Federal Register, Oct. 11, 1988 and supplemental guidance in Guidance For Data Quality Assessment (EPA/600/R-96/084 January 1998).

C. Failure to Maintain Best Available Technology Required by Permit

1. Permittee to Provide Information

In the event that the permittee fails to maintain best available technology or otherwise fails to meet best available technology standards as required by the permit, the permittee shall submit to the Director a notification and description of the failure according to R317-6-6.13. Notification shall be given orally within 24 hours of the permittee's discovery of the failure of best available technology, and shall be followed up by written notification, including the information necessary to make a determination under R317-6-6.16.C.2, within five days of the permittee's discovery of the failure of best available technology.

2. Director

The Director shall use the information provided under R317-6-6.16.C.1 and any additional information provided by the permittee to determine whether to initiate a compliance action against the permittee for violation of permit conditions. The Director shall not initiate a compliance action if the Director determines that the permittee has met the standards for an affirmative defense, as specified in R317-6-6.16.C.3.

3. Affirmative Defense

In the event a compliance action is initiated against the permittee for violation of permit conditions relating to best available technology, the permittee may affirmatively defend against that action by demonstrating the following:

a. The permittee submitted notification according to R317-6-6.13;

b. The failure was not intentional or caused by the permittee's negligence, either in action or in failure to act;

c. The permittee has taken adequate measures to meet permit conditions in a timely manner or has submitted to the Director, for the Director's approval, an adequate plan and schedule for meeting permit conditions; and

d. The provisions of 19-5-107 have not been violated.

6.17 PROCEDURE WHEN A FACILITY IS OUT-OF-COMPLIANCE

A. If a facility is out of compliance the following is required:

1. The permittee shall notify the Director of the out of compliance status within 24 hours after detection of that status, followed by a written notice within 5 days of the detection.

2. The permittee shall initiate monthly sampling, unless the Director determines that other periodic sampling is appropriate, until the facility is brought into compliance.

3. The permittee shall prepare and submit within 30 days to the Director a plan and time schedule for assessment of the source, extent and potential dispersion of the contamination, and an evaluation of potential remedial action to restore and maintain ground water quality and insure that permit limits will not be exceeded at the compliance monitoring point and best available technology will be reestablished.

4. The Director may require immediate implementation of the contingency plan submitted with the original ground water discharge permit in order to regain and maintain compliance with the permit limit standards at the compliance monitoring point or to reestablish best available technology as defined in the permit.

5. Where it is infeasible to re-establish BAT as defined in the permit, the permittee may propose an alternative BAT for approval by the Director.

6.18 GROUND WATER DISCHARGE PERMIT TRANSFER

A. The permittee shall give written notice to the Director of any transfer of the ground water discharge permit, within 30 days of the transfer.

B. The notice shall include a written agreement between the existing and new permittee establishing a specific date for transfer of permit responsibility, coverage and liability.

6.19 ENFORCEMENT

These rules are subject to enforcement under Section 19-5-115 of the Utah Water Quality Act.

KEY: water quality, ground water, cleanup standards, petroleum hydrocarbons
October 24, 2013 19-5
Notice of Continuation July 26, 2012

R331. Financial Institutions, Administration.
R331-14. Rule Governing Parties Who Engage in the Business of Issuing and Selling Money Orders, Traveler's Checks, and Other Instruments for the Purpose of Effecting Third-Party Payments.
R331-14-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301, 7-1-501(2)(h)(iii) and 7-1-505.

(2) This rule applies to any individual or other party who issues, sells or offers to sell within the state any instrument for the purpose of effecting payments to third parties, including, but not limited to, money orders, traveler's checks, and the wire transmission of money. Excluded from this rule are:

(a) any party chartered and regulated by the United States or the state as a depository institution which is currently operating as a depository institution, and

(b) the U.S. Post Office.

(3) The purpose of this rule is to require licensing and prescribe standards with regard to the financial condition and capability of all parties who issue instruments payable to third parties, such as money orders and traveler's checks, for the benefit and protection of the purchasers of such instruments.

R331-14-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Payment instrument" means a check, money order, traveler's check, draft, or other instrument for the transmission or payment of money to third parties.

(3) "Party" means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any form of business entity.

R331-14-3. License Required.

No party subject to this rule shall issue any kind of payment instrument to be offered for sale or sold in the state unless the issuer first obtains a license to do so from the department. No party subject to this rule may offer for sale or sell payment instruments of any kind in the state which are issued by any party not holding a current license to issue payment instruments in accordance with this rule, unless the issuer is exempt from the requirement to hold such a license.

R331-14-4. Requirements for a License.

To qualify for a license to issue payment instruments for sale in Utah, an applicant shall provide or pay to the department:

(1)(a) Proof satisfactory to the department that the applicant is a depository institution chartered and regulated by a state in the United States other than Utah and is currently operating as a depository institution; or

(b) A certified financial statement satisfactory to the department for the most recent fiscal year showing the applicant has a net worth of at least one million dollars ($1,000,000).

(B) A surety bond satisfactory to the department in the minimum sum of $50,000 to reimburse the state for any expenses of any kind or nature that it may incur in connection with any administrative or judicial proceedings against a licensee, former licensee or seller relating to the issuance and/or sale of payment instruments in Utah.

(3) Additional information as may be specified by the department.

(4) A non-refundable filing fee in the sum of $100.00.

R331-14-5. Renewal.

Unless previously revoked by the department, each license shall expire on July 31 of each year if before that date the licensee fails to deliver or pay to the department:

(1) Proof that the party continues to operate as a regulated depository institution or a certified financial statement for the licensee's last fiscal year showing that it continues to have a net worth of at least $1,000,000, proof of renewal of the surety bond described in part 4B hereof, and any other information the department may request, all in a form acceptable to the department.

(2) A non-refundable renewal fee in the sum of $100.00.

R331-14-6. Revocation of License.

The department, with or without a hearing, may for cause revoke or suspend a license to issue payment instruments at any time. If the department revokes a license, it shall not be obligated to refund any portion of the licensee's filing or renewal fee for the remainder of the period for which the fee was paid.

R331-14-7. Required Deposits.

If the department finds any reasonable cause to believe that a licensee is in an unsafe or unsound condition or is unwilling or unable to pay its payment instruments when they come due, it may require the licensee to deposit funds in a financial institution(s) acceptable to the department in such amounts, for such period, and upon such conditions as the department may specify, and may prohibit the licensee from issuing payment instruments for sale in Utah in an aggregate unpaid amount exceeding the amount of any such required deposit or the amount actually deposited pursuant to such a requirement, whichever is less.

R331-14-8. Instruments to Bear Name of Licensee.

Every payment instrument issued by a licensee for sale in Utah, or which is sold in Utah, shall state on its face the name of the licensee issuer.

KEY: financial institutions

October 3, 1997	**7-1-301**
Notice of Continuation July 20, 2012	**7-1-501(8)(c)**
	7-1-505

R331. Financial Institutions, Administration.
R331-25. Rule Governing Debt Cancellation and Debt Suspension Agreements Issued by Depository Institutions, Who Are Under the Jurisdiction of the Department of Financial Institutions.
R331-25-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-1-324(2).

(2) This rule governs the issuance of a debt cancellation agreement or debt suspension agreement by a depository institution under the jurisdiction of the Department of Financial Institutions.

(3) This rule establishes uniform rules for debt cancellation and debt suspension agreements by depository institutions subject to the jurisdiction of the department and minimum standards of disclosure to protect the public interest.

R331-25-2. Definitions.

(1) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

R331-25-3. Refunds of Fees in the Event of Termination or Prepayment of the Covered Loan.

(1) Refunds. If a debt cancellation agreement or debt suspension agreement is terminated (including, for example, when the customer prepays the covered loan), the depository institution shall refund to the customer any unearned fees paid for the agreement unless the agreement provides otherwise. A depository institution may offer a customer an agreement that does not provide for a refund only if the depository institution also offers that customer a bona fide option to purchase a comparable agreement that provides a refund.

(2) Method of calculating refund. The depository institution shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

(3) Method of payment of fees. Except as provided in R331-25-6(3)(b), a depository institution may offer a customer the option of paying the fee for an agreement in a single payment, provided the depository institution also offers the customer a bona fide option of paying the fee for that agreement in monthly or other periodic payments. If the depository institution offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the depository institution must also disclose to the customer, in accordance with R331-25-4, whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

R331-25-4. Disclosures.

(1) Content of short form of disclosures. The short form of disclosures required by this rule must include:

(a) a statement that the purchase of the agreement is optional and whether or not the consumer purchases the agreement will have no effect on their application for credit or the terms of any existing credit agreement;

(b) a statement that the consumer may choose to pay the fee in a single lump sum or in monthly/quarterly payments and a disclosure that adding a lump sum of the fee to the amount borrowed will increase the cost of the agreement;

(c) a statement that the consumer may choose an agreement with or without a refund provision and that the prices are likely to differ;

(d) a statement that the depository institution will provide additional information before the consumer is required to pay for the agreement.

(2) Content of long form of disclosures. The long form of disclosures required by this rule must include:

(a) a statement that the purchase of the agreement is optional and whether or not the consumer purchases the agreement will have no effect on their application for credit or the terms of any existing credit agreement;

(b) an explanation that a debt suspension agreement means that the duty to pay the loan principal and interest to the depository institution or industrial loan company is only suspended and does not cancel the obligation if the agreement is activated;

(c) a statement describing the total fee for the agreement and that the consumer may choose to pay the fee in a single lump sum or in monthly/quarterly payments and a disclosure that adding a lump sum of the fee to the amount borrowed will increase the cost of the agreement plus the formula used to compute any monthly or quarterly fee payment;

(d) a statement that the consumer may choose an agreement with or without a refund provision and that the prices are likely to differ;

(e) a statement explaining the circumstances under which the consumer or the depository institution can terminate the agreement if termination is permitted during the life of the loan.

(3) Disclosure requirements; timing and method of disclosures.

(a) Short form disclosures: The depository institution shall make the short form disclosures orally at the time the depository institution first solicits the purchase of an agreement.

(b) Long form disclosures: The depository institution shall make the long form disclosures in writing before the customer completes the purchase of the agreement. If the initial solicitation occurs in person, then the depository institution shall provide the long form disclosures in writing at that time.

(c) Transactions by telephone: If the agreement is solicited by telephone, the depository institution shall provide the short form disclosures orally and shall mail the long form disclosures, and, if appropriate, a copy of the agreement to the customer within 3 business days, beginning on the first business day after the telephone solicitation.

(d) Solicitations using written mail inserts or "take one" applications: If the agreement is solicited through written materials such as mail inserts or "take one" applications, the depository institution may provide only the short form disclosures in the written materials if the depository institution mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the depository institution to respond to the solicitation, subject to the requirements of R331-25-5(3).

(e) Electronic transactions: The disclosures described in this section may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

(4) Form of disclosures.

(a) Readily Understandable: The disclosures required by this section must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided.

(b) Meaningful: The disclosures required by this section must be in a meaningful form. Examples of methods that could call attention to the nature and significance of the information provided include:

(i) A plain-language heading to call attention to the disclosures;

(ii) A typeface and type size that are easy to read;

(iii) Wide margins and ample line spacing;

(iv) Boldface or italics for key words; and

(v) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(5) Advertisements and other promotional material for debt cancellation agreements and debt suspension agreements. The short form disclosures are required for advertisements and promotional material for agreements unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the depository institution.

R331-25-5. Affirmative Election to Purchase and Acknowledgment of Receipt of Disclosures.

(1) Affirmative election and acknowledgment of receipt of disclosures. Before entering into an agreement the depository institution must obtain a customer's written affirmative election to purchase an agreement and written acknowledgment of receipt of the disclosures required by R331-25-4(2). The election and acknowledgment information must be conspicuous, simple, direct, readily understandable, and designed to call attention to their significance. The election and acknowledgment satisfy these standards if they conform with the requirements in R331-25-4(2) of this rule.

(2) Telephone solicitations: If the sale of an agreement occurs by telephone, the customer's affirmative election to purchase may be made orally, provided the depository institution:

(a) Maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the agreement;

(b) Mails the affirmative written election and written acknowledgment, together with the long form disclosures required by this subsection, to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(c) Permits the customer to cancel the purchase of the agreement without penalty within 30 days after the depository institution has mailed the long form disclosures to the customer.

(3) Solicitations using written mail inserts or "take one" applications: If the agreement is solicited through written materials such as mail inserts or "take one" applications and the depository institution provides only the short form disclosures in the written materials, then the depository institution shall mail the acknowledgment of receipt of disclosures, together with the long form disclosures required by this subsection, to the customer within 3 business days, beginning on the first business day after the customer contacts the depository institution or otherwise responds to the solicitation. The depository institution may not obligate the customer to pay for the agreement until after the depository institution has received the customer's written acknowledgment of receipt of disclosures unless the depository institution:

(a) Maintains sufficient documentation to show that the depository institution provided the acknowledgment of receipt of disclosures to the customer as required by this subsection;

(b) Maintains sufficient documentation to show that the depository institution made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long form disclosures; and

(c) Permits the customer to cancel the purchase of the agreement without penalty within 30 days after the depository institution has mailed the long form disclosures to the customer.

(4) Electronic election: The affirmative election and acknowledgment may be made electronically in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

R331-25-6. Prohibited Practices.

(1) A depository institution may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation agreement or debt suspension agreement with the depository institution.

(2) A depository institution may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous expectation with respect to information that must be disclosed under this rule.

(3) Prohibited contract terms. A depository institution may not offer debt cancellation agreements or debt suspension agreements that contain contract terms:

(a) Giving the depository institution the right unilaterally to modify the agreement unless:

(i) The modification is favorable to the customer and is made without additional charge to the customer; or

(ii) The customer is notified of any proposed change and is provided a reasonable opportunity to cancel the agreement without penalty before the change goes into effect; or

(b) Requiring a lump sum, single payment for the agreement payable at the outset of the agreement, where the debt subject to the agreement is a residential mortgage loan.

R331-25-7. Safety and Soundness Requirements.

A depository institution must manage the risks associated with debt cancellation agreements and debt suspension agreements in accordance with safe and sound banking principles. Accordingly, a depository institution must establish and maintain effective risk management and control processes over its debt cancellation agreements and debt suspension agreements. Such processes include appropriate recognition and financial reporting of income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the agreements. A depository institution also should assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its debt cancellation agreement and debt suspension agreement programs.

KEY: financial institutions, debt cancellation, debt suspension
October 15, 2003 7-1-324(2)
Notice of Continuation October 11, 2013

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-3. Children's Hearing Aid Pilot Program.
R398-3-1. Definitions.

a. "UDOH" is Utah Department of Health.

b. "Hearing aid" is any traditional non-surgical device providing acoustic amplification.

c. "CHAPP" is Children's Hearing Aid Pilot Program.

d. "CSHCN" is the Bureau of Children with Special Health Care Needs.

e. "L and D" is loss and damage, referring to warranty or insurance coverage for hearing aids.

f. "Managing audiologist" is a non-UDOH licensed audiologist with expertise in pediatric audiology who is responsible for the provision of hearing aids and follow-up care to eligible children.

R398-3-2. Purpose and Authority.

The purpose of this rule is to set forth the process to identify children who are financially eligible to receive services under the pilot program and describe how the department will review and pay for services provided to a child under the pilot program.

This rule is authorized by Section 26-10-11(5) which provides that the department shall make rules regarding implementation of the hearing aid pilot program.

R398-3-3. Process to Identify Children Who Are Financially Eligible for Services.

(1) Participant financial eligibility

a. Children younger than three years old, with hearing loss who do not yet own a hearing aid or for whom current amplification is no longer appropriate may be eligible for hearing aids under this pilot program.

b. Participant must complete and submit CSHCN Financial Form (PFR) with application to the managing audiologist.

c. Upon request, the family must provide a copy of the most recent federal income tax filing to CHAPP 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.

d. Family must be at or below 300% of Federal Poverty Level.

e. This is a one-time benefit per child.

R398-3-4. Process to Review and Pay for Services Provided to a Child.

(1) Applications

a. Participant application

i. Must be completed by parent or guardian.

ii. Child shall participate in a Part C Early Intervention program.

iii. Application must be submitted to managing audiologist with:

1. Proof of denial for Medicaid or evidence that family is ineligible for Medicaid.

2. Proof of denial for coverage by current insurance provider.

i. Family/guardian shall provide coverage for all out-of-warranty repairs.

ii. If L and D is claimed during the warranty period, the family shall provide supplemental hearing aid insurance including L and D.

iii. Child will receive hearing aids directly from managing audiologist.

a. Audiologist qualifications and application

i. Hearing aid must be dispensed by a licensed audiologist.

ii. A separate application must be submitted for each child.

(2) Review of applications

a. All applications will be reviewed for completeness and eligibility by the Advisory Committee chair or UDOH designee.

b. Eligibility shall be communicated to the managing audiologist.

(3) Payment process

a. Within 30 days of hearing aid fitting, the managing audiologist will submit the Payment Request Cover Sheet with all supporting documentation.

b. UDOH will review documentation to assure that managing audiologist has submitted all items listed in payment request.

c. Payments will go directly to the managing audiologist.

KEY: hearing aids
October 15, 2013 26-10-11

R410. Health, Health Care Financing.
R410-14. Administrative Hearing Procedures.
R410-14-1. Introduction and Authority.

(1) This rule sets forth the administrative hearing procedures for the Division of Medicaid and Health Financing.

(2) This rule is authorized by Section 26-1-24, Section 63G-4-102, 42 U.S.C. 1396(a)(3), and 42 CFR 431, Subpart E.

R410-14-2. Definitions.

(1) The definitions in Rule R414-1 and Section 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means a denial, termination, suspension, or reduction of medical assistance for a recipient, or a reduction, denial or revocation of reimbursement for services for a provider; or a denial or termination of eligibility for participation in a program, or as a provider.

(b) "Aggrieved Person" means any recipient or provider who is adversely affected by any action or inaction of the Division of Medicaid and Health Financing (DMHF) within the Department of Health, the Department of Human Services (DHS), the Department of Workforce Services (DWS), or any managed health care plan.

(c) "De novo" means anew, or considering the question of a case for the first time.

(d) "Ex Parte" communications mean direct or indirect communication in connection with an issue of fact or law between the hearing officer and one party only.

(e) "Hearing Officer" means solely any person designated by the DMHF Director to conduct administrative hearings for the Medicaid program.

(f) "Managed Care Organization" means a health maintenance organization or prepaid mental health plan that contracts with DMHF to provide medical or mental health services to medical assistance recipients.

(g) A "medical record" is a record that contains medical data of a client.

(h) "Order" means a ruling by a hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

R410-14-3. Administrative Hearing Procedures.

(1) An Aggrieved Person may file a written request for agency action pursuant to Section 63G-4-201, and in accordance with this rule. If a medical issue is in dispute, each request should include supporting medical documentation. DMHF will schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.

(2) DMHF shall conduct the following as formal adjudicative proceedings in accordance with Section R410-14-12:

(a) Preadmission Screening Resident Review (PASRR) Hearings. Pursuant to 42 U.S.C. 1396r, any resident and potential resident of a nursing facility whether Medicaid eligible or not, who disagrees with the preadmission screening and appropriateness of a placement decision that DMHF or its designated agent makes, has the right to a hearing upon request.

(b) Nurse Aide Registry Hearings. Pursuant to 42 U.S.C. 1395i-3, each nurse aide is subject to investigation of allegations of resident abuse, neglect or misappropriation of resident property. DMHF or its designated agent shall investigate each complaint and the nurse aide is entitled to a hearing that DMHF or its designated agent conducts before a substantiated claim can be entered into the registry.

(c) Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility for the Mentally Retarded (ICF/MR) Hearings. 42 CFR 431, Subpart D, requires DMHF to provide SNF, ICF and ICF/MR grievance procedures that satisfy the requirements of 42 CFR 431.153 and 431.154.

(d) Managed Care Entity Hearings. Pursuant to 42 U.S.C. 1396u-2, federal law requires Medicaid and Children's Health Insurance Program (CHIP) managed care entities to have an internal grievance procedure for Medicaid and CHIP enrollees or providers acting on the enrollee's behalf to challenge the denial of payment for medical assistance. The MCE shall provide to enrollees written information that explains the grievance procedure. DMHF requires exhaustion of the MCE grievance procedure before an enrollee or provider may request a hearing. An enrollee or provider who submits a hearing request on behalf of another enrollee must include a copy of the final written notice of the appeal decision. An enrollee or provider who acts on the enrollee's behalf must also request a hearing within 30 days from the date of the MCE final written notice of the appeal decision.

(e) Home and Community-Based Waiver Hearings. 42 CFR 431, Subpart E, requires DMHF to provide grievance procedures that satisfy the requirements of 42 CFR 431.200 through 431.250.

(i) For home and community-based waivers in which the Division of Services for People with Disabilities (DSPD) is the designated operating agency and the grievance is based on whether the person meets the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the eligibility determination of the operating agency is final. If DSPD determines that an individual does not meet the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the operating agency shall inform the individual in writing and provide the individual an opportunity to appeal the decision through the DHS hearing process in accordance with Section R539-3-8. The DSPD decision is dispositive for purposes of this subsection. DMHF shall sustain the determination and there is no right to further agency review.

(3) DMHF shall conduct the following as informal adjudicative proceedings:

(a) Resident Right Hearings. Pursuant to 42 U.S.C. 1396n, the state may restrict access to providers that it designates for services for a reasonable amount of time. The state may also restrict Medicaid recipients that utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines. DMHF shall give the recipient notice and opportunity for an informal hearing before imposing restrictions.

(4) Eligibility Hearings. If eligibility for medical assistance is at issue, DWS shall conduct the hearing. DMHF, however, shall conduct any hearing to determine an applicant's or recipient's disability.

R410-14-4. Availability of Hearing.

(1) The hearing officer may not grant a hearing if the issue is a state or federal law requiring an automatic change in eligibility for medical assistance or covered services that adversely affect the Aggrieved Person.

(2) DMHF shall conduct a hearing in connection with the agency action if the Aggrieved Person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the hearing officer may deny a request for an evidentiary hearing and issue a recommended decision without a hearing.

(3) There is no disputed issue of fact if the Aggrieved Person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(4) If the Aggrieved Person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

(5) DMHF may not grant a hearing to a managed care provider to dispute the terms of a contract, including but not

limited to rates of reimbursement and alternative dispute resolution.

R410-14-5. Notice.

(1) DMHF, DHS, DWS, and an MCE shall provide written notice to each applicant or recipient affected by an adverse action in accordance with 42 CFR 431.200 et seq. Adverse actions to an applicant or recipient include actions that affect:

(a) eligibility for assistance;

(b) scope of service;

(c) denial or limited prior authorization of a requested service including the type or level of service; or

(d) payment of a claim.

(2) A notice must contain:

(a) a statement of the action DMHF, DHS, DWS, or an MCE intends to take;

(b) the date the intended action becomes effective;

(c) the reasons for the intended action; and

(d) the specific regulations that support the action, or the change in federal law, state law or DMHF policy, which requires the action;

(e) the right and procedure to request a formal hearing before DMHF or an informal hearing before DHS or DWS;

(f) the right to represent oneself, the right to legal counsel, or the right to use another representative at the formal hearing; and

(g) if applicable, an explanation of the circumstances under which reimbursement for medical services will continue pending the outcome of the proceeding, if DMHF receives a hearing request within ten calendar days from the date of the notice of agency action.

(3) DMHF shall mail the notice at least ten calendar days before the date of the intended action except:

(a) DMHF may mail a notice not later than the date of action in accordance with 42 CFR 431.213.

(4) DMHF may shorten the period of advance notice to five days before the date of action if:

(a) DMHF has facts that indicate it must take action due to probable fraud by the recipient or provider; and

(b) the facts have been verified by affidavit.

R410-14-6. Request for Formal Hearing.

(1) DMHF shall conduct formal hearings for all issues except those specifically excluded by this rule. The hearing officer may convert the proceeding to an informal hearing if a recipient or provider requests an informal hearing that meets the criteria set forth in Section 63G-4-202.

(2) Formal hearings must be requested within the following deadlines:

(a) A medical assistance provider or recipient must request a formal hearing within 30 calendar days from the date that DMHF sends written notice of its intended action.

(b) A medical assistance recipient must request an informal hearing with DWS regarding eligibility for medical assistance within 90 calendar days from the date that DMHF sends written notice of its intended action.

(c) A medical assistance recipient must request a formal hearing with DMHF regarding eligibility for disability assistance within 90 calendar days from the date that DMHF sends written notice of its intended action.

(d) A medical assistance recipient must request a formal hearing regarding scope of service within 30 calendar days from the date that DMHF sends written notice of its intended action.

(3) Failure to submit a timely request for a formal hearing constitutes a waiver of an individual's due process rights. The request must explain why the recipient is seeking agency relief, and the recipient must submit the request on the "Request for Hearing/Agency Action" form. The recipient must then mail or fax the form to the address or fax number contained on the notice of agency action.

(4) DMHF considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, DMHF considers the request to be filed on the date that DMHF receives it, unless the sender can demonstrate through competent evidence that he mailed it before the date of receipt.

(5) DMHF shall schedule a pre-hearing, or begin negotiations in writing within 30 calendar days from the date it receives the request for a formal hearing or agency action.

(6) DMHF may deny or dismiss a request for a hearing if the Aggrieved Person:

(a) withdraws the request in writing;

(b) verbally withdraws the hearing request at a prehearing conference;

(c) fails to appear or participate in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the hearing officer or fails to provide medical records that the agency requests.

(7) An Aggrieved Person must inform DMHF of his current address and telephone number.

R410-14-7. Reinstatement and Continuation of Services.

(1) DMHF may reinstate services for a recipient or suspend any adverse action for a provider if the Aggrieved Person requests a formal hearing not more than ten calendar days after the date of action.

(2) DMHF shall reinstate or continue services for a recipient or suspend adverse actions for a provider until it renders a decision after a formal hearing if:

(a) DMHF takes adverse action without giving ten-day notice to a recipient or a provider when advance notice is required;

(b) advance notice is not required and the Aggrieved Person requests a formal hearing within ten calendar days after the date that DMHF mails the adverse action notice; or

(c) DMHF determines that the action resulted from other than the application of federal law, state law or DMHF policy.

R410-14-8. Notice of Formal Hearing.

DMHF shall notify the Aggrieved Person or the person's representative in writing of the date, time and place of the formal hearing, and shall mail the notice at least ten calendar days before the date of the hearing unless all parties agree to an alternative time frame.

R410-14-9. Form of Papers.

(1) Any document that an individual or party files with DMHF in a formal proceeding must:

(a) be typed or legibly written;

(b) bear a caption that clearly shows the title of the hearing;

(c) bear the docket number, if any;

(d) be dated and signed by the party or the party's authorized representative;

(e) contain the address and telephone number of the party or the party's authorized representative; and

(f) consist of an original and two copies.

R410-14-10. Service.

(1) The individual or party that files a document with DMHF shall also serve the document upon all other named parties to the proceeding and file a proof of service with DMHF that consists of a certificate, affidavit or acknowledgment of service.

(2) Each party must receive one copy by personal delivery or mail to the proper address with postage prepaid. If an individual represents a party, service upon the individual is sufficient.

(3) If DMHF must provide notice of a formal hearing, the notice becomes effective on the date of first class mailing to the party's address of record.

(4) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

R410-14-11. Intervention.

(1) Section 63G-4-207 permits a person to intervene in a formal adjudicative proceeding if:

(a) the person petitions to intervene at least seven calendar days before the scheduled hearing, or as the hearing officer permits;

(b) the petition contains a clear and concise statement of the direct and substantial interest of the person seeking to intervene;

(c) the person seeking affirmative relief states the basis for relief;

(d) the hearing officer has discretion to permit other parties an opportunity to support or oppose intervention; and

(e) the hearing officer has discretion to grant leave to intervene.

(2) The hearing officer may dismiss an intervenor if the intervenor has no direct or substantial interest in the hearing.

R410-14-12. Conduct of Hearing.

(1) DMHF shall conduct hearings in accordance with Section 63G-4-206. DMHF will conduct all hearings on a de novo basis.

(2) DMHF shall appoint an impartial hearing officer to conduct formal hearings. Previous involvement in the initial determination of the action precludes an officer from appointment.

(3) The hearing officer may elect to hold a prehearing meeting to:

(a) formulate or simplify the issues;

(b) obtain admissions of fact and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) outline procedures for the formal hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(4) DMHF shall record agreements that the parties reach during the prehearing or the parties may enter into a written stipulation.

(5) DMHF may conduct all formal hearings only after adequate written notice of the hearing has been served on all parties setting forth the date, time and place of the hearing.

(6) The hearing officer shall take testimony under oath or affirmation.

(7) Each party has the right to:

(a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;

(b) introduce exhibits;

(c) impeach any witness regardless of which party first called the witness to testify; and

(d) rebut the evidence against the party.

(8) DMHF shall follow the rules of evidence as applied in Utah civil actions. Each party may admit any relevant evidence and use hearsay evidence to supplement or explain other evidence. Hearsay, however, is not sufficient by itself to support a finding unless admissible over objection in civil actions. The hearing officer shall give effect to the rules of privilege recognized by law and may exclude irrelevant, immaterial and unduly repetitious evidence.

(9) The hearing officer may question any party or witness.

(10) The hearing officer shall control the evidence to obtain full disclosure of the relevant facts and to safeguard the rights of the parties. The hearing officer may determine the order in which he receives the evidence.

(11) The hearing officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly or disruptive conduct. The hearing officer may remove any person, including a participant from the hearing, to maintain order. If a person shows persistent disregard for order and procedure, the hearing officer may:

(a) restrict the person's participation in the hearing;

(b) strike pleadings or evidence; or

(c) issue an order of default.

(12) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the hearing officer at no cost to the agency.

(13) The party who initiates the hearing process through a request for agency action has the burden of proof as the moving party.

(14) When a party possesses but fails to introduce certain evidence, the hearing officer may infer that the evidence does not support the party's position.

R410-14-13. Ex Parte Communications.

(1) Ex parte communications are prohibited.

(2) The hearing officer may not listen to or accept any ex parte communication. If a party attempts ex parte communication, the hearing officer shall inform the offeror that any communication that the hearing officer receives off the record, will become part of the record and furnished to all parties.

(3) Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

R410-14-14. Continuances or Further Hearings.

(1) The hearing officer, on the officer's own motion or at the request of a party showing good cause, may:

(a) continue the hearing to another time or place; or

(b) order a further hearing.

(2) If the hearing officer determines that additional evidence is necessary for the proper determination of the case, the officer may:

(a) continue the hearing to a later date and order the party to produce additional evidence; or

(b) close the hearing and hold the record open to receive additional documentary evidence.

(3) The hearing officer shall provide to all parties any evidence that he receives and each party has the opportunity to rebut that evidence.

(4) The hearing officer shall provide written notice of the time and place of a continued or further hearing, except when the officer orders a continuance during a hearing and all parties receive oral notice.

R410-14-15. Record.

(1) The hearing officer shall make a complete record of all formal hearings. A hearing record is the sole property of DMHF and DMHF shall maintain the complete record in a secure area.

(2) If a party requests a copy of the recording of a formal hearing, that party may transcribe the recording.

(3) DMHF or its designated agent shall retain recordings of formal hearings for a period of one year.

(4) DMHF shall retain written records of formal hearings for a period of two years pending further litigation.

R410-14-16. Proposed Decision and Final Agency Review.

(1) At the conclusion of the formal hearing, the hearing officer shall take the matter under advisement and submit a recommended decision to the DMHF Director or the director's designee. The recommended decision is based on the testimony and evidence entered at the hearing, Medicaid policy and procedure, and legal precedent.

(2) The recommended decision must contain findings of fact and conclusions of law.

(3) The DMHF Director or the director's designee may:

(a) adopt the recommended decision or any portion of the decision;

(b) reject the recommended decision or any portion of the decision, and make an independent determination based upon the record; or

(c) remand the matter to the hearing officer to take additional evidence, and the hearing officer thereafter shall submit to the DMHF director or the director's designee a new recommended decision.

(4) The director or designee's decision constitutes final administrative action and is subject to judicial review.

(5) DMHF shall send a copy of the final administrative action to each party or representative and notify them of their right to judicial review.

(6) The parties shall comply with a final decision from the director reversing the agency's decision within ten calendar days.

(7) The Executive Director shall review all recommended decisions to determine approval of medical assistance for an organ transplant. The Executive Director's decision constitutes final administrative action and is subject to judicial review.

R410-14-17. Amending Administrative Orders.

(1) DMHF may amend an order if the hearing officer determines that the agency made a clerical mistake.

(2) DMHF shall notify the respondent and the petitioner of its intent to amend the order by serving a notice of agency action signed by the hearing officer.

(3) The DMHF Director shall review the amended order and he or his designee shall issue a final agency amended order.

(4) DMHF shall provide a copy of the final amended order to the respondent and the petitioner.

R410-14-18. Agency Review.

An Aggrieved Person may move for reconsideration of DMHF's final administrative action in accordance with Sections 63G-4-301 and 302. A person may seek review of a DWS final agency order concerning eligibility for medical assistance by filing a written request for review with DMHF in accordance with Section 63G-4-301.

R410-14-19. Judicial Review.

An Aggrieved Person may obtain judicial review in accordance with Section 63G-4-102 and 63G-4-401 through 405.

R410-14-20. Discovery.

(1) The Utah Rules of Civil Procedure do not apply to formal adjudicative proceedings and formal discovery is permitted only as set forth in this section. Each party shall diligently pursue discovery and full disclosure to prevent delay. A party that conducts discovery under this section shall maintain a mailing certificate.

(2) The scope of discovery in formal adjudicative proceedings, unless otherwise limited by order of the hearing officer, is as follows:

(a) DMHF may request copies of pertinent records in the possession of the recipient and the recipient's health care providers. In the event the recipient or provider fails to produce the records within a reasonable time, DMHF may review all pertinent records in the custody of the recipient or provider during regular working hours after three days of written notice.

(b) The recipient must submit medical records with the hearing request whenever possible. Necessary medical records include:

(i) the provision of each service and activity billed to the program;

(ii) the first and last name of the petitioner;

(iii) the reason for performing the service or activity that includes the petitioner's complaint or symptoms;

(iv) the recipient's medical history;

(v) examination findings;

(vi) diagnostic test results;

(vii) the goal or need that the plan of care identifies; and

(viii) the observer's assessment, clinical impression or diagnosis that includes the date of observation and identity of the observer.

(c) The medical records must demonstrate that the service is:

(i) medically necessary;

(ii) consistent with the diagnosis of the petitioner's condition; and

(iii) consistent with professionally recognized standards of care.

(3) DMHF shall allow the Aggrieved Person or the person's representative to examine all DMHF documents and records upon written request to DMHF at least three days before the hearing.

(4) An individual may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(5) The hearing officer may permit the filing of formal discovery or take depositions only upon a clear showing of necessity that takes into account the nature and scope of the dispute. If the hearing officer allows formal discovery, he shall set appropriate time frames for response and assess sanctions for non-compliance.

(6) The hearing officer may order a medical assessment at the expense of DMHF to obtain information. This information is subject to HIPAA confidentiality requirements and is part of the hearing record.

(7) Each party shall file a signed pretrial disclosure form at least ten calendar days before the scheduled hearing that identifies:

(a) fact witnesses;

(b) expert witnesses;

(c) exhibits and reports the parties intend to offer into evidence at the hearing;

(d) petitioner's specific benefit or relief claimed;

(e) respondent's specific defense;

(f) an estimate of the time necessary to present the party's case; and

(g) any other issues the parties intend to request the hearing officer to adjudicate.

(8) Each party shall supplement the pretrial disclosure form with information that becomes available after filing the original form. The pretrial disclosure form does not replace other discovery that is allowed under this section.

R410-14-21. Witnesses and Subpoenas.

(1) A party shall arrange for a witness to be present at a hearing.

(2) The hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence upon written request by a party that demonstrates a sufficient need.

(3) The hearing officer may issue a subpoena on his own motion.

(4) A party may file an affidavit that requests the hearing officer to subpoena a witness to produce books, papers, correspondence, memoranda, or other records. The affidavit must include:

(a) the name and address of the person or entity upon whom the subpoena is to be served;

(b) a description of the documents, papers, books, accounts, letters, photographs, objects, or other tangible items that the applicant seeks;

(c) material that is relevant to the issue of the hearing; and

(d) a statement by the applicant that to the best of his knowledge, the witness possesses or controls the requested material.

(5) A party shall arrange to serve any subpoena that the hearing officer issues on its behalf, and shall serve a copy of the affidavit that it presents to the hearing officer.

(6) Except for employees of DOH, DHS, DWS, or a managed care plan, a witness that the hearing officer subpoenas to attend a hearing is entitled to appropriate fees and mileage. The witness shall file a written demand for fees with the hearing officer within ten calendar days from the date that he appears at the hearing.

(7) The hearing officer may issue an order of default against any party that fails to obey an order entered by the hearing officer.

R410-14-22. Declaratory Orders.

(1) DMHF shall issue declaratory orders in accordance with Rule R380-1.

(2) Copies of approved forms to petition for declaratory orders are available from DMHF upon request.

(3) If DMHF does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.

(4) DMHF shall retain the request for declaratory ruling in its records.

(5) DMHF may not issue a declaratory order if an adjudicative proceeding that involves the same parties and issue is pending before the agency or the courts.

R410-14-23. Interpreters.

(1) If a party notifies DMHF that it needs an interpreter, DMHF shall arrange for an interpreter at no cost to the party.

(2) The party may arrange for an interpreter to be present at the hearing only if the hearing officer can verify that the interpreter is at least 18 years of age, and fluent in English and the language of the person who testifies.

(3) The hearing officer shall instruct the interpreter to interpret word for word, and not to summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter must swear under oath to truthfully and accurately translate all statements, questions and answers.

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63G-4-102

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-2A. Inpatient Hospital Services.
R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in Section R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness and intensity of service requires continuous care in a hospital, as noted by InterQual Criteria as noted in Section R414-1-12.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(9) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-2A-3. Client Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-2A-4. Hospital Admission Requirements.

(1) Each hospital providing inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.

(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152.

R414-2A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness. Inpatient hospital care is limited to medical treatment of symptoms that will lead to medical stabilization of the patient. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.

(2) The Department does not pay for physician services rendered by a non-Medicaid provider.

(3) Services performed for a patient by the admitting hospital or by an entity wholly-owned or wholly-operated by the hospital within three days of patient admission, are considered inpatient services. This three-day window applies to diagnostic and non-diagnostic services that are clinically related to the reason for the patient's inpatient admission regardless of whether the inpatient and outpatient diagnoses are the same.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

R414-2A-7. Limitations.

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the patient is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Section 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by Rule R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by Rule R414-10.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

(12) Inpatient psychiatric services not covered by mental health contractual agreements must first be reviewed and preauthorized by the Department to assure that the admission meets the requirements of 42 CFR 412.27 and Part 441, Subpart D.

R414-2A-8. Coinsurance.

Each Medicaid client is responsible for a coinsurance

payment as established in the Utah State Medicaid Plan and incorporated by reference in Rule R414-1.

R414-2A-9. Reimbursement Methodology.

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, please refer to Section R414-1-12.

(5) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(6) If an observation stay meets the intensity and severity for inpatient hospitalization, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

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26-18-3.5

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-1. General Definitions.
R426-1-100. Authority and Purpose.

This rule establishes uniform definitions for all R426 rules. It also provides administration standards applicable to all R426 rules.

R426-1-200. General Definitions.

The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule, in addition:

(1) "Advanced Emergency Medical Technician" or "AEMT" means an individual who has completed an AEMT training program, approved by the Bureau, who is certified by the Department as qualified to render services enumerated in this rule.

(2) "Air Ambulance Personnel" mean the pilot and patient care personnel who are involved in an air medical transport.

(3) "Air Ambulance Service" means any publicly or privately owned organization that is licensed or applies for licensure under R426-3 and provides transportation and care of patients by air ambulance.

(4) "Air Ambulance Service Medical Director" means a physician knowledgeable of potential medical complications which may arise because of air medical transport, and is responsible for overseeing and assuring that the appropriate air ambulance, medical personnel, and equipment are provided for patients transported by the air ambulance service.

(5) "Categorization" means the process of identifying and developing a stratified profile of Utah hospital trauma critical care capabilities in relation to the standards defined under R426-5-7.

(6) "Certify," "Certification," and "Certified" mean the official Department recognition that an individual has completed a specific level of training and has the minimum skills required to provide emergency medical care at the level for which he is certified.

(7) "Competitive Grant" means a grant awarded through the Emergency Medical Services Grants Program on a competitive basis for a share of available funds.

(8) "Continuing Medical Education" means Department-approved training relating specifically to the appropriate level of certification designed to maintain or enhance an individual's emergency medical skills.

(9) "County or Multi-County EMS Council or Committee" means a group of persons recognized as the legitimate entity within the county to formulate policy regarding the provision of EMS.

(10) "Course Coordinator" means an individual who has completed a Department course coordinator course and is certified by the Department as capable to conduct Department-authorized EMS courses.

(11) "Department" means the Utah Department of Health.

(12) "Emergency Medical Dispatcher" or "EMD" means an individual who has completed a Department approved EMD training program, and is certified by the Department as qualified to render services enumerated in this rule.

(13) "Emergency Medical Dispatch Center" means an agency designated by the Department for the routine acceptance of calls for emergency medical assistance from the public, utilizing a selective medical dispatch system to dispatch licensed ambulance, and paramedic services.

(14) "Emergency Medical Responder" or "EMR" means an individual who has completed a Department approved EMR training program, and is certified by the Department as qualified to render services enumerated in this rule.

(15) "Emergency Medical Technician" or "EMT" means an individual who has completed a Department approved EMT training program and is certified by the Department as qualified to render services enumerated in this rule.

(16) "Emergency Medical Technician Intermediate Advanced" means an individual who has completed a Department approved EMT- IA training program and is certified by the Department as qualified to render services enumerated in this rule.

(17) "Paramedic" means an individual who has completed a Department approved Paramedic training program and is certified by the Department as qualified to render services enumerated in this rule.

(18) "EMS" means Emergency Medical Services.

(19) "EMS Incident" means an instance in which an Emergency Medical Services Provider is requested to provide or potentially provide emergency medical services.

(20) "EMS Instructor" means an individual who has completed a Department EMS instructor course and is certified by the Department as capable to teach EMS personnel.

(21) "EMS stand-by event" means the on-site licensed ambulance, paramedic service, or designated quick response unit at a scheduled event or activity provided by the local 911 exclusive license provider or their designee as referred to in R426-3-400(6).

(22) "Exclusive License" means the sole right to perform the licensed act in a defined geographic service area, and that prohibits the Department of Health from performing the licensed act, and from granting the right to anyone else.

(23) "Grants Review Subcommittee" means a subcommittee appointed by the EMS Committee to review, evaluate, prioritize and make grant funding recommendations to the EMS Committee.

(24) "Inclusive Trauma System means the coordinated component of the State emergency medical services (EMS) system composed of all general acute hospitals licensed under Title 26, Chapter 21, trauma centers, and prehospital providers which have established communication linkages and triage protocols to provide for the effective management, transport and care of all injured patients from initial injury to complete rehabilitation.

(25) "Individual" means a human being.

(26) "Level of Care" means the capabilities and commitment to the care of the trauma patient available within a specified facility.

(27) "Level of Certification" means the official Department recognized step in the certification process in which an individual has attained as an EMS provider.

(28) "Meritorious Complaint" means a complaint against a licensee, designated agency, or certified provider(s) that is made by a patient, a member of the immediate family of a patient, or health care provider, that the Department determines is substantially supported by the facts or a licensee, designated agency, or certified provider(s):

(a) has repeatedly failed to provide service at the level or in the exclusive geographic service area required licensee;

(b) has repeatedly failed to follow operational standards established by the EMS Committee;

(c) has committed an act in the performance of a professional duty that endangered the public or constituted gross negligence; or

(d) has otherwise repeatedly engaged in conduct that is adverse to the public health, safety, morals or welfare, or would adversely affect the public trust in the emergency medical service system.

(29) "Matching Funds" means that portion of funds, in cash, contributed by the grantee to total project expenditures.

(a) "On-line Medical Control" which refers to physician medical direction of prehospital personnel during a medical emergency; and

(b) "Off-line Medical Control" which refers to physician oversight of local EMS services and personnel to assure their

medical accountability.

(30) "Medical Director" means a physician certified by the Department to provide off-line medical control.

(31) "Net Income" - The sum of net service revenue, plus other regulated operating revenue and subsidies of any type, less operating expenses, interest expense, and income.

(32) "Paramedic Ground Ambulance" means the provision of advanced life support patient care and transport by paramedic personnel in a licensed ambulance.

(33) "Paramedic Rescue Service" means the provision of advanced life support patient care by paramedic personnel without the ability to transport patients.

(34) "Paramedic Unit" means a vehicle which is properly equipped, maintained and used to transport paramedics to the scene of emergencies to perform paramedic services without the ability to transport patients.

(35) "Paramedic Tactical Service" means the retrieval and field treatment of injured peace officers or victims of traumatic confrontations by paramedics who are trained in combat medical response.

(36) "Paramedic Tactical Unit" means a vehicle which is properly equipped, maintained and used to transport paramedics to the scene of traumatic confrontations to provide paramedic tactical services.

(37) "Patient Care Report" means a record of the response by each responding Emergency Medical Services Provider unit to each patient during an EMS Incident.

(38) "Per Capita grants" mean block grants determined by prorating available funds on a per capita basis as delineated in 26-8a-207, as part of the Emergency Medical Services Grants Program.

(39) "Permit" means the document issued by the Department that authorizes a vehicle to be used in providing emergency medical services.

(40) "Person" means an individual, firm, partnership, association, corporation, company, or group of individuals acting together for a common purpose, agency, or organization of any kind public or private.

(41) "Physician" means a medical doctor licensed to practice medicine in Utah.

(42) "Pilot" means any individual licensed under Federal Aviation Regulations, Part 135.

(43) "Prehospital Care" means medical care given to an ill or injured patient by a designated or licensed EMS provider outside of a hospital setting.

(44) "Primary emergency medical services" means an organization that is the only licensed or designated service in a geographical area.

(45) "Quick Response Unit" means an entity that provides emergency medical services to supplement local ambulance services or provide unique services.

(46) "Resource Hospital" means a facility designated by the EMS Committee to provide on-line medical control for the provision of prehospital emergency care.

(47) "Scene" means the location of initial contact with the patient.

(48) "Selective Medical Dispatch System" means a department-approved reference system used by a local dispatch agency to dispatch aid to medical emergencies which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(49) "Specialized Life Support Air Ambulance Service" means a level of care which requires equipment or specialty patient care by one or more medical personnel in addition to the regularly scheduled air medical team.

(50) "Training Officer" means an individual who has completed a department Training Officer Course and is certified by the Department to be responsible for an EMS provider organization's continuing medical education, recertification records, and testing.

(51) "Transition period" means prescribed range of dates that includes a begin and end date in which EMS providers will change their level of certificate from existing levels of certification to the Department adopted National Traffic and Highway Safety Administration's (NTHSA) National EMS Scope of Practice Model. This model names levels of certification as EMR, EMT, AEMT and Paramedic.

KEY: emergency medical services
October 18, 2013 26-8a

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-2. Emergency Medical Services Provider Designations, Critical Incident Stress Management and Quality Assurance Reviews.
R426-2-100. Authority and Purpose.

(1) This rule establishes: standards for the designation of emergency medical service providers; criteria for critical incident stress management; and process for quality assurance reviews.

(2) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-2-200. Designation Types.

(1) An entity that responds to 911 EMS calls for assistance from the public, but that does not provide ambulance transport or paramedic service, shall obtain a designation from the Department as a quick response unit.

(2) An entity that accepts calls for 911 EMS assistance from the public, and dispatches emergency medical units or field EMS personnel must first obtain a designation from the Department as an emergency medical dispatch center.

(3) A hospital that provides on-line medical control for prehospital emergency medical care must first obtain a designation from the Department as a resource hospital.

R426-2-300. Service Levels.

(1) A quick response unit may only operate and perform the skills at the service level at which it is designated. The Department may issue designations for the following types of service at the given levels: quick response unit;

(a) emergency medical responder;

(b) emergency medical technician; or

(c) advanced-emergency medical technician.

(2) emergency medical dispatch center; and

(3) resource hospital.

R426-2-400. Scope of Operations.

(1) A designated quick response unit may only provide service in its specific geographical service area except as provided by R426-3-800 Aid Agreements.

(2) A designated quick response unit may only provide emergency medical services for its category of designation that corresponds to the certification levels in R426-5.

R426-2-500. Quick Response Unit Minimum Designation Requirements.

A person requesting designation must meet the following minimum requirements:

(1) Have vehicle(s), equipment, and supplies that meet the requirements of R426-4-900 to carry out its responsibilities under its designation;

(2) Have location(s) for stationing its vehicle(s), equipment and supplies;

(3) Have a current dispatch agreement with a designated Emergency Medical Dispatch Center.

(4) Have a Department-certified training officer;

(5) Have a current plan of operations, which shall include:

(a) the names, EMS ID Number, and certification level of all personnel;

(b) operational procedures; and

(c) a description of how the designee proposes to interface with other EMS agencies;

(6) Have a current agreement with a Department-certified off-line medical director who will perform the following:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, prehospital protocols, and/or pre-arrival instructions to be given by designated emergency medical dispatch centers;

(b) ensure the qualification of field EMS personnel involved in patient care and dispatch through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel or dispatcher who does not comply with local medical triage, treatment and transport protocols, pre-arrival instruction protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director must notify the Department within one business day of the suspension; and

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers.

(7) Have current treatment protocols approved by the agencies off-line medical director for the designated service level;

(8) Provide the Department with a copy of its certificate of insurance;

(9) Provide the Department with a letter of support from the licensed provider(s) in the geographical service area; and

(10) Not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) a history of disciplinary action relating to an EMS license, permit, designation or certification in this or any other state.

R426-2-600. Emergency Medical Dispatch Center Minimum Designation Requirements.

An emergency medical dispatch center must:

(1) Have in effect a selective medical dispatch system approved by the off-line medical directors and the Department, which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration;

(2) Have a current updated plan of operations, which shall include:

(a) the names, training, and certification of Emergency Medical Dispatch personnel;

(b) operational procedures which at a minimum include

(i) a description of how the designee proposes to communicate with EMS agencies;

(ii) a copy of the disaster and disaster recovery plans.

(3) Have a current agreement with a Department-certified off-line medical director.

(4) Have an ongoing medical call review quality assurance program; and

(5) Provide pre-hospital arrival instructions by a certified Emergency Medical Dispatcher at all times.

R426-2-700. Resource Hospital Minimum Requirements.

A resource hospital must meet the following minimum requirements:

(1) be licensed in Utah or another state as a general acute hospital or be a Veteran's Administration hospital operating in Utah.

(2) have the ability to communicate with other EMS providers operating in the area.

(3) provide on-line medical control for all prehospital EMS providers who request assistance for patient care, 24

hours-a-day, seven days a week. A resource hospital must also:

(a) create and abide by written prehospital emergency patient care protocols for use in providing on-line medical control for prehospital EMS providers;

(b) train new staff on the protocols before the new staff is permitted to provide on-line medical control; and annually review with physician and nursing staff

(c) annually provide in-service training on the protocols to all physicians and nurses who provide on-line medical control; and

(d) make the protocols immediately available to staff for reference.

(4) The on-line medical control shall be by direct voice communication with a physician or a registered nurse or physician's assistant licensed in Utah who is in voice contact with a physician.

(5) A resource hospital must establish and actively implement a quality improvement process. This process will include:

(a) a medical control committee.

(i) the committee must meet at least quarterly to review and evaluate prehospital emergency runs, continuing medical education needs, and EMS system administration problems;

(ii) committee members must include an emergency physician representative, hospital nurse representative, hospital administration representative, and ambulance and emergency services representatives; and

(iii) the hospital must keep minutes of the medical control committee's meetings and make them available for Department review.

(b) the hospital must appoint a quality review coordinator for the prehospital quality improvement process.

(c) the hospital must cooperate with the prehospital EMS providers' off-line medical directors in the quality review process, including granting access to hospital medical records of patients served by the particular prehospital EMS provider.

(d) the hospital must assist the Department in evaluating EMS system effectiveness by submitting to the Department, in an electronic format specified by the Department, quarterly data specified by the Department.

R426-2-710. Stroke Treatment and Stroke Receiving Center Designation Requirements.

A hospital desiring to be a Stroke Treatment Center (Primary or Comprehensive) must be accredited as such by the Joint Commission on Accreditation of healthcare Organizations (JACHO) or other nationally recognized accrediting body. A hospital desiring to be designated as a Stroke Receiving Center for receiving stroke patients via Emergency Medical Services shall meet the following requirements:

(1) Be licensed as an acute care hospital in Utah.

(2) Have an emergency department staffed by a Registered Nurse at all time.

(3) Require physician response to the emergency department in less that thirty (30) minutes for treatment of stroke patients.

(4) Maintain the ability of physician and nursing staff to utilize a standardized assessment tool for ischemic stroke patients.

(5) Maintain, have readily available and utilize approved thrombolytic medications for treatment of patients meeting criteria for administration of thrombolytic therapy.

(6) Have a standardized acute stroke protocol in place and provide authority of appropriate emergency department staff to implement the protocol when appropriate.

(7) Maintain availability of ancillary equipment and personnel to diagnose and treat acute stroke patients in a timely manner.

(8) Have in place patient transport protocols with designated stroke treatment centers.

(9) Have an active and functioning performance improvement program for acute stroke care and report required data to the Utah Department of Health as required by the Department.

(10) Submit to a formal survey by representatives of the Department

(11) Upon successful designation, the Department may, in consultation with off line EMS medical direction and protocol, recommend direct transport of stroke patients to a Stroke Receiving Center or a Stroke Treatment Center by an EMS agency.

R426-2-720. Percutaneous Coronary Intervention (PCI) Center Requirements.

A hospital desiring to be designated as a Percutaneous Coronary Intervention (PCI) Center for the purpose of receiving acute ST-elevation myocardial infarction (STEMI) patients via EMS shall meet to following requirements:

(1) Be licensed as an acute care hospital in Utah.

(2) Have an emergency department staffed by at least one (1) Physician and one (1) Registered Nurse at all times.

(3) Have the ability to receive 12 lead EKG data from EMS agencies transporting patients to the hospital for treatment of ST Segment Elevation Myocardial Infarction (STEMI).

(4) Have and maintain the ability to provide cardiac catheterization and PCI of STEMI patients within ninety (90) minutes of patient arrival in the emergency department 24/7.

(5) Have an active and functioning performance improvement program for STEMI care and report required data to the Utah Department of Health as required by the Department.

(6) Submit to a forma survey by representatives of the Department.

(7) Upon successful designation, the Department may, in consultation with offline EMS medical direction and protocol, recommend direct transport of STEMI patients to a STEMI Treatment Center by an EMS agency.

R426-2-800. Designation Application.

An entity desiring a designation or a renewal of its designation shall submit:

(a) applicable fees and an application on Department-approved forms to the Department.

(b) documentation that it meets the minimum requirements for the designation listed in this rule.

(c) other information the Department determines to be necessary for processing the application and oversight of the designated entity and the following:

(2) Quick Response Unit;

(a) identifying information about the entity and its principals, if a resource hospital the name of the hospital;

(b) the name of the person or governmental entity financially and otherwise responsible for the service provided by the designee and documentation from that entity accepting the responsibility;

(c) identifying information about the entity that will provide the service and its principals;

(d) if the applicant is not a governmental entity, a statement of type of entity and certified copies of the documents creating the entity;

(e) a description of the geographical area that it will serve; and

(f) demonstrate a need for said service.

(3) Emergency Medical Dispatch Center;

(a) documentation of the on-going medical call review and quality assurance program; and

(b) documentation of any modifications to the medical dispatch protocols.

(4) Resource Hospital;
(a) the hospital's address;
(b) the name and phone number of the individual who supervises the hospital's responsibilities as a designated resource hospital.

R426-2-810. Stroke Designation Application.

A hospital desiring to be designated as a Stroke Receiving Center shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall provide:

(1) The name of the hospital to be designated.
(2) The hospital address
(3) The name and phone number of the person responsible for supervision of the hospital's stroke care.
(4) Other information that the department deems necessary for processing of the application and oversight of the designated entity.
(5) Hospitals desiring designation must be verified by hosting a site visit by the Department.
(6) The Department and its consultants my conduct observation, review and monitor activities with any designated stroke center to verify ongoing compliance with designation requirements.
(7) Submit performance improvement data to the Department as required.

R426-2-820. Percutaneous Coronary Intervention (PCI) Center Application.

A hospital desiring to be designated as a ST Segment Elevation Myocardial Infarction (STEMI) Treatment Center shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall provide:

(1) The name of the hospital to be designated.
(2) The hospital address
(3) The name and phone number of the person responsible for supervision of the hospital's STEMI care.
(4) Other information that the department deems necessary for processing of the application and oversight of the designated entity.
(5) Hospitals desiring designation must be verified by hosting a site visit by the Department.
(6) The Department and its consultants my conduct observation, review and monitor activities with any designated stroke center to verify ongoing compliance with designation requirements.
(7) Submit performance improvement data to the Department as required.

R426-2-900. Criteria for Denial or Revocation of Designation.

(1) The Department may deny an application for a designation for any of the following reasons:
(a) failure to meet requirements as specified in the rules governing the service;
(b) failure to meet vehicle, equipment, or staffing requirements;
(c) failure to meet requirements for renewal or upgrade;
(d) conduct during the performance of duties relating to its responsibilities as an EMS provider that is contrary to accepted standards of conduct for EMS personnel described in Sections 26-8a-502 and 26-8a-504;
(e) failure to meet agreements covering training standards or testing standards;
(f) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;
(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;
(h) falsifying or misrepresenting any information required for licensure or designation or by the application for either;
(i) failure to pay the required designation or permitting fees or failure to pay outstanding balances owed to the Department;
(j) failure to submit records and other data to the Department as required by statute or rule;
(k) misuse of grant funds received under Section 26-8a-207; and
(l) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.
(2) An applicant who has been denied a designation may request a Department review by filing a written request for reconsideration within thirty calendar days of the issuance of the Department's denial.

R426-2-1000. Application Review and Award.

(1) If the Department finds that an application for designation is complete and that the applicant meets all requirements, it may approve the designation.
(2) Issuance of a designation by the Department is contingent upon the applicant's demonstration of compliance with all applicable rules and a successful Department quality assurance review.
(3) A designation may be issued for up to a four-year period. The Department may alter the length of the designation to standardize renewal cycles.

R426-2-1100. Change in Designated Service Level.

(1) A quick response unit may apply to provide a higher designated level of service by:
(a) submitting the applicable fees; and
(b) submitting an application on Department-approved forms to the Department.
(2) As part of the application, the applicant shall provide:
(a) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director;
(b) an updated plan of operations demonstrating the applicant's ability to provide the higher level of service;
(c) a written assessment of the performance of the applicant's field performance by the applicant's off-line medical director; and
(d) provide the Department with a letter of support from the licensed provider(s) in the geographical service area.
(3) If the Department finds that the applicant has demonstrated the ability to provide the upgraded service, it shall issue a new designation reflecting the higher level of service.

R426-2-1200. Critical Incident Stress Management.

(1) The Department may establish a critical incident stress management (CISM) team to meet its public health responsibilities under Utah Code Section 26-8a-206.
(2) The CISM team may conduct stress debriefings and defusings upon request for persons who have been exposed to one or more stressful incidents in the course of providing emergency services.
(3) Individuals who serve on the CISM team must complete initial and ongoing training.
(4) While serving as a CISM team member, the individual is acting on behalf of the Department. All records collected by the CISM team are Department records. CISM team members shall maintain all information in strict confidence as provided in Utah Code Title 26, Chapter 3.
(5) The Department may reimburse a CISM team member for mileage expenses incurred in performing his or her duties in accordance with state finance mileage reimbursement policy.

R426-2-1300. Quality Assurance Reviews.

(1) The Department may conduct quality assurance reviews of licensed and designated organizations and training programs on an annual basis or more frequently as necessary to enforce this rule;

(2) The Department shall conduct a quality assurance review prior to issuing a new license or designation.

(3) The Department may conduct quality assurance reviews on all personnel, vehicles, facilities, communications, equipment, documents, records, methods, procedures, materials and all other attributes or characteristics of the organization, which may include audits, surveys, and other activities as necessary for the enforcement of the Emergency Medical Services System Act and the rules promulgated pursuant to it.

(a) The Department shall record its findings and provide the organization with a copy.

(b) The organization must correct all deficiencies within 30 days of receipt of the Department's findings.

(c) The organization shall immediately notify the Department on a Department-approved form when the deficiencies have been corrected.

R426-2-1400. Penalties.

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6 and/or revocation of designation.

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R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-3. Licensure.
R426-3-100. Authority and Purpose.

(1) This Rule is established under Chapter 8, Title 26a, Chapter 8a. It establishes standards for the licensure of an air ambulance, ground ambulance, and paramedic services.

(2) The purpose of this rule is to set forth air and ground ambulance policies, rules, and standards adopted by the Utah Emergency Medical Services Committee, which promotes and protects the health and safety of the people of this state.

(3) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-3-200. Requirement for Licensure.

A person or entity that provides or represents that it provides air ambulance, ground ambulance, paramedic ground ambulance, or paramedic services must first be licensed by the Department.

R246-3-300. Licensure Types.

(1) The Department may issue exclusive ground ambulance transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic

(d) current emergency medical technician intermediate advanced (EMT-IA) licenses will remain in effect, no new EMT-IA licenses will be issued.

(2) The Department may issue exclusive ground ambulance inter-facility transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(3) The Department may issue exclusive paramedic, non-transport licenses for the following types of service at the given response configurations:

(a) paramedic; and

(b) paramedic tactical

(4) The Department may issue Air Ambulance licenses for the following types of services at the given levels:

(a) advanced life support;

(b) specialized life support;

(5) The Department may issue Air Ambulance licenses for the following types of specialties for which the specialized Life support Air Ambulance Service is licensed.

(a) specialty obstetrics;

(b) specialty pediatrics;

(c) specialty neonatal;

(d) specialty burns; and

(e) specialty cardiac.

R426-3-400. Scope of Operations.

(1) A licensee may only provide service to its specific licensed geographic service area and is responsible to provide service to its entire specific geographic service area except as provided by R426-3-800 Aid Agreements. It will provide emergency medical services for its category of licensure that corresponds to the certification levels in R426-5 Emergency Medical Services Training and Certification Standards.

(2) A licensee may not subcontract. A subcontract is present if a licensee engages a person that is not licensed to provide emergency medical services to all or part of its specific geographic service area. A subcontract is not present if multiple licensees allocate responsibility to provide ambulance services between them within a specific geographic service area for which they are licensed to provide ambulance service.

(3) A ground ambulance inter-facility transfer licensee may only transport patients from a hospital, nursing facility, emergency patient receiving facility, mental health facility, or other licensed medical facility when arranged by the transferring physician for the particular patient.

(4) A person or entity may not furnish, operate, conduct, maintain, advertise, or provide ground or air ambulance transport services to patients within the state or from within the state to out of state unless licensed by the Department.

(5) All licensed Emergency Medical Services conforming to R426-3-200 must provide services 24 hours a day, every day of the year. Air Medical services must provide air medical services 24 hours a day, every day of the year as allowed by weather conditions.

(6) A ground ambulance or paramedic licensee must provide all ambulance or paramedic services, including standby services, for any special event that requires ground ambulance or paramedic services within its geographic service area.

R426-3-500. Minimum Licensure Requirements Air Ambulance, Ground Ambulance, and Paramedic Services.

A licensee conforming to R426-3-200 must meet the following minimum requirements:

(1) have sufficient air or ground ambulances, emergency response vehicle(s), equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license or proposed license without relying upon aid agreements with other licensees.

(2) have locations or staging areas for stationing its vehicles.

(3) have a current written dispatch agreement with a designated emergency medical dispatch center.

(4) have current written aid agreements with other licensees to give assistance in times of unusual demand.

(5) have a Department certified EMS training officer that is responsible for continuing education.

(6) have a current plan of operations, which shall include;

(a) a business plan demonstrating:

(i) ability to provide the service; and

(ii) fiscal plan.

(b) a roster of medical personnel which includes level of certification or licensure to ensure there is sufficient trained and certified staff that meets the requirements of R426-4-200 Staffing, and

(c) operational procedures.

(7) a description of how the licensee or applicant proposes to interface with other EMS agencies.

(8) all permitted vehicles shall be equipped to allow field EMS personnel to be able to:

(a) communicate with hospital emergency departments, dispatch centers, EMS providers, and law enforcement services; and

(b) communicate on radio frequencies assigned to the Department for EMS use by the Federal Communications Commission.

(9) have a current written agreement with a Department-certified off-line medical director or a medical director certified in the state where the service is based pursuant to R426-3-700.

(10) provide the Department with a copy of its certificate of insurance or if seeking application, provide proof of the ability to obtain insurance to respond to damages due to operation of a vehicle or air ambulance in the manner and following minimum amounts:

(a) have liability insurance in the amount of $300,000 for each individual claim and $500,000 for total claims for personal injury from any one occurrence; and

(b) liability insurance in the amount of $100,000 for property damage from any one occurrence.

(c) the licensee shall obtain the insurance from an

insurance company authorized to write liability coverage in Utah or through a self-insurance program and shall:

(i) provide the Department with a copy of its certificate of insurance demonstrating compliance with this section; and

(ii) direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage within 60 days.

(11) not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) disciplinary action relating to an EMS license, permit, designation, or certification in this or any other state that adversely affect its service under its license.

(12) A paramedic tactical service must be a public safety agency or have a letter of recommendation from a county or city law enforcement agency within the paramedic tactical service's geographic service area.

R426-3-600. Application.

(1) An applicant desiring to be licensed or to renew its license for an air ambulance, ground ambulance, and paramedic services shall submit the applicable fees and application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-3-500 and the following:

(a) for an application for new service:

(i) a detailed description and detailed map of the exclusive geographical areas that will be served;

(ii) if the requested geographical service area is for less than all ground ambulance or paramedic services, the applicant shall include a written description and detailed map showing how the areas not included will receive ground ambulance or paramedic services;

(iii) if an applicant is responding to a public bid as described in 26-8a-405.2 the applicant shall include detailed maps and descriptions for all geographical areas served in accordance with 26-8a-405.2(2).

(iv) documentation showing that the applicant meets all local zoning and business licensing standards within the exclusive geographical service area that it will serve;

(v) a written description of how the applicant will communicate with dispatch centers, law enforcement agencies, on-line medical control, and patient transport destinations;

(b) for renewal applications:

(i) a written assessment of field performance from the applicant's off-line medical director; and

(ii) other information that the Department determines necessary for the processing of the application and the oversight of the licensed entity.

(2) In addition to the above, an applicant for air ambulance services must submit the following:

(a) certified articles of incorporation, if incorporated;

(b) a statement summarizing the training and experience of the applicant in the air transportation and care of patients;

(c) a copy of current Federal Aviation Administration (FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations;

(d) a copy of the current certificates of insurance demonstrating coverage for medical malpractice;

(e) a statement detailing the level of care for which the air ambulance service wishes to be licensed, either advanced or specialized;

(f) air ambulance services must have an agreement to allow hospital emergency department physicians, nurses, and other personnel who participate in emergency medical services to fly on air ambulances;

(g) air ambulance service shall submit a description and location of each dedicated and back-up air ambulance(s) procured for use in the Air ambulance service, including the make, model, and year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics; and

(h) successful completion of a Department approved accreditation process; and

(i) for new air ambulance services licensed under R426-3-200 they must submit an application for accreditation by a Department approved accreditation process within one year of receiving a license under this rule; and

(j) air ambulance services licensed under R426-3-200 must achieve accreditation and maintain accreditation.

(3) A ground ambulance or paramedic service holding a license under 26-8a-404, including any political subdivision that is part of special district may respond to a request for proposal if it complies with 26-8a-405(2).

R426-3-700. Medical Control.

(1) All licensees must enter into a written agreement with a physician to serve as its off-line medical director to supervise the medical care or instructions provided by the field EMS personnel and dispatchers. The physician must be familiar with:

(a) the design and operation of the local prehospital EMS system; and

(b) local dispatch and communication systems and procedures.

(2) The off-line medical director shall:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, and transport protocols;

(b) ensure the qualification of field EMS personnel involved in patient care through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel who does not comply with local medical triage, treatment and transport protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director must notify the Department within one business day of the suspension.

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers.

(g) licensed agencies shall notify the Department if an off-line medical director is replaced, within thirty days after the action.

(h) have current treatment protocols approved by the agency's off-line medical director for the existing service level for renewal or new treatment protocols if seeking an application.

(3) It is the responsibility of the air ambulance medical director to:

(a) authorize written protocols for the use by air medical attendants and review policies and procedures of the Air ambulance service.

(b) develop and review treatment protocols, assess field performance, and critique at least 10% of the Air ambulance service runs.

R426-3-800. Aid Agreements.

(1) All licensed ground ambulance provider shall have/maintain aid agreement(s) with other ground ambulance provider(s) to call upon them for assistance during times of unusual demand or standby events.

(2) Aid agreements shall be in writing, signed by both parties, and detail the:

(a) purpose of the agreement;
(b) type of assistance required;
(c) circumstances under which the assistance would be given; and
(d) duration of the agreement.
(3) The parties shall provide a copy of the aid agreement to the emergency medical dispatch centers that dispatch the licensees.
(4) If the ground ambulance licensee is unable or unwilling to provide ambulance standby service or special event coverage, the licensee shall allow a ground ambulance licensee through the use of aid agreements to provide all ground ambulance service for the standby or special event.

R426-3-900. Selection of a Provider by Public Bid.
(1) A political subdivision that desires to select a provider through a public bid process as provided in 26-8a-405.1, shall submit its draft request for proposal to the Department in accordance with 26-8a-405.2(2), together with a cover letter listing all contact information. The proposal shall include all the criteria listed in 26-8a-405.1 and 405.2.
(2) The Department shall, within 14 business days of receipt of a request for proposal from a political subdivision, review the request according to 26-8a-405.2(2); and
(a) approve the proposal by sending a letter of approval to the political subdivision;
(b) require the political subdivision to alter the request for proposal to meet statutory and rule requirements; or
(c) deny the proposal by sending a letter detailing the reasons for the denial and process for appeal.

R426-3-1000. Application Review and Award.
(1) Upon receipt of an appropriately completed application, for Air ambulance service, ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.
(2) After review and before issuing a license to a new service the Department shall directly inspect the air or ground vehicle(s), equipment, and required documentation.
(3) If, upon Department review, the application is complete and meets all the requirements, the Department shall:
(a) for a new license application, issue a notice of approved application as required by 26-8a-405 and 406;
(b) issue a renewal license to an applicant in accordance with 26-8a-413(1) and (2) or 26-8a-405.1(3), whichever is applicable.
(c) issue a four-year renewal license to a license selected by a political subdivision if the political subdivision certified to the Department that the licensee has met all of the specifications of the original bid and requirements of 26-8a-413(1) through 26-8a-313(3); or
(d) issue a second four-year renewal license to a licensee selected by a political subdivision if:
(i) the political subdivision certified to the Department that the licensee has met all of the specifications of the original bid and requirements of 26-8a(1) through (3); and
(ii) if the Department or the political subdivision has not received, prior to the expiration date, written notice from an approved applicant desiring to submit a bid for ambulance or paramedic services.
(4) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review.
(5) A license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.
(6) Upon the request of the political subdivision and the agreement of all interested parties and the Department that the public interest would be served, the renewal license may be issued for a period of less than four years or a new request for the proposal process may be commenced at any time.

R426-3-1100. Criteria for Denial or Revocation of Licensure.
(1) The Department may deny an application for a license, a renewal of a license, or revoke, suspend or restrict a license without reviewing whether a license must be granted or renewed to meet public convenience and necessity for any of the following reasons:
(a) failure to meet substantial requirements as specified in the rules governing the service;
(b) failure to meet vehicle, equipment, staffing, or insurance requirements;
(c) failure to meet agreements covering training standards or testing standards;
(d) substantial violation of Subsection 26-8a-504(1);
(e) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;
(f) a history of serious or substantial public complaints;
(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;
(h) falsification or misrepresentation of any information in the application or related documents;
(i) failure to pay the required licensing or permitting fees or other fees or failure to pay outstanding balances owed to the Department;
(j) financial insolvency;
(k) failure to submit records and other data to the Department as required by R426-7;
(l) a history of inappropriate billing practices, such as:
(i) charging a rate that exceeds the maximum rate allowed by rule;
(ii) charging for items or services for which a charge is not allowed by statute or rule; or
(iii) Medicare or Medicaid fraud.
(m) misuse of grant funds received under Section 26-8a-207; or
(n) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.
(2) An applicant or licensee that has been denied, revoked, suspended or issued a restricted license may appeal by filing a written appeal within thirty calendar days of the receipt of the issuance of the Department's denial.

R426-3-1200. Change in Non-911 Service Level.
(1) A ground ambulance service licensee may apply to provide a higher level of non-911 ambulance service as referred to under 26-8a-102(14). The applicant shall submit:
(a) the applicable fees;
(b) an application on Department-approved forms to the Department.
(c) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director;
(d) an updated plan of operations demonstrating the applicant's ability to provide the higher level of service; and
(e) a written assessment of the performance of the applicant's field performance by the applicant's off-line medical director.
(2) If the Department determines that the applicant has demonstrated the ability to provide the higher level of service, it shall issue a revised license reflecting the higher level of service without making a separate finding of public convenience and necessity.

R426-3-1300. Change of Owner.

A license and the vehicle permits terminate if the holder of a licensed service transfers ownership of the service to another party. As outlined in 26-8a-415, the new owner must submit, within ten business days of acquisition, applications and fees for a new license and vehicle permits.

R426-3-1400. Penalties.

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6 and/or suspension or revocation of license(s).

KEY: emergency medical services
October 18, 2013 26-8a

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-4. Operations.
R426-4-100. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a. It establishes standards for the operation of EMS providers licensed or designated under the provisions of the Emergency Medical Services System Act.

(2) The purpose of this rule is to set forth air and ground ambulance policies, rules, and standards adopted by the Utah Emergency Medical Services Committee, which promotes and protects the health and safety of the people of this state.

(3) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-4-200. Staffing.

(1) Quick response units shall be staffed by at least one provider certified at or above their designated level of service.

(2) Ground ambulance or Paramedic services shall have the following minimum complement of personnel:

(a) Basic Life Support ambulance services staffing shall be at least two certified EMTs, AEMTs, EMT-IA, or paramedics or any combination thereof.

(b) AEMT ambulance services staffing shall be at least one certified EMS Professional at the level of their service and one more certified provider at EMT level or higher.

(c) EMT-IA ambulance services staffing shall be at least one certified EMS Professional at the level of their service and one more certified provider at EMT level or higher.

(d) Paramedic ambulance services staffing shall be at least one paramedic and one EMT, AEMT, EMT-IA, or paramedic.

(e) Paramedic (non-transport) services staffing shall be at least one paramedic.

(f) Paramedic inter-facility services staffing shall be one paramedic and at least one EMT, AEMT, or paramedic.

(3) Licensed paramedic ambulance or paramedic services shall deploy two paramedics to the scene of 911 calls for service requiring ALS response, unless otherwise determined by local selective medical dispatch system protocols.

(4) Air ambulance services providing advanced life support must have at least one medical attendant who is a Paramedic, PA, RN, or MD/DO. This attendant shall be the primary medical attendant. The second medical attendant shall be a Paramedic, PA, Respiratory Therapist, RN, or MD/DO.

(5) Air ambulance services providing specialized life support must have at least one medical attendant who is an RN or MD. This attendant shall be the primary medical attendant. The second medical attendant shall be a Paramedic, PA, RT, RN, or MD/DO.

(6) When providing care, responders not in an agency approved uniform shall display their level of medical certification.

(7) Each designated or licensed agency shall maintain a personnel file for each certified individual. The personnel file must include records documenting the individual's qualifications, training, certification, immunizations, and continuing medical education.

(8) A provider may only perform to the service level of the licensed or designated service, regardless of the certification level of the provider.

R426-4-300. Permits and Inspections.

(1) The Department requires an annual inspection on all air and ground licensed vehicles, quick response designated vehicles, and emergency medical dispatch centers to assure compliance.

(a) Ambulance vehicles must meet Federal General Services Administration Specification for ground ambulances as of the date of manufacture and new vehicles must meet current state approved specifications for ground ambulances.

(b) All vehicles must pass an inspection of the equipment and vehicle supply requirements pursuant to R426-4-900 Ground Ambulance Vehicle Supply Requirements or R426-4-1000 Air Ambulance Supply Requirements.

(2) After successful completion of an inspection, the Department shall issue a permit for a period of one year from the date of issue and shall remain valid for that period, unless revoked or suspended by the Department.

(3) All air or ground ambulance, licensed and designated providers must annually obtain a permit from the Department to operate in Utah. The current permit decal shall be displayed in a visible location on the vehicle. Showing the permit expiration date and permit number issued by the Department prominent on a publicly visible place on the vehicle as evidence of compliance.

(4) Air Ambulance permit holder shall meet all Federal Aviation Regulations specific to the operations of the air medical service.

(5) The Department shall issue annual permits for vehicles used by licensees only if the new or replacement ambulance meets the requirements listed in R426-4-900.

(6) The Department may give consideration for a waiver from the requirements of R426-4-900 to communities with limited populations or unique problems for purchase and use of ambulance vehicles.

(7) Permits and decals are not transferable to other vehicles.

R426-4-400. Vehicle Operations.

(1) Licensees shall notify the Department of the permanent location or where of the vehicles will be staged if using staging areas. The licensee shall notify the Department in writing whenever it changes the permanent location for each vehicle.

(2) Vehicles shall be maintained on a premise suitable to make it available for immediate use, in good mechanical repair, properly equipped, and in a sanitary condition.

(3) Each ambulance shall be maintained in a clean condition with the interior being thoroughly cleaned after each use in accordance with OSHA standards the agency's exposure control plan.

(4) Each ambulance shall be equipped with adult and child safety restraints and to the point practicable when feasible all occupants must be restrained.

(5) An air medical service ambulance shall comply with all state and federal requirements governing the specific vehicles utilized for air medical transport services.

(6) Each licensee is responsible for assuring that its vehicles are driven by only trained, experienced, and otherwise qualified personnel. The licensee must, at a minimum document that each of its drivers:

(a) Is at least 18 years of age;

(b) possesses a valid driver's license

(c) is trained in the safe operation of emergency vehicles, has completed an approved emergency vehicle operator's course;

(d) and possesses a valid cardiopulmonary resuscitation card.

(7) Personnel who do not hold a currently approved emergency medical technician certification are subject to:

(a) Application;

(b) Bureau of Criminal Investigations background check;

(c) and registration with the Department

(d) Upon successful completion of required items the Department shall issue a driver only registration card.

(8) The Department shall annually inspect licensees for verification of compliance with this section. Services that are unable to verify compliance are subject to disciplinary action Subsection 63G-3-201(5) and Section 26-23-6.

R426-4-500. Complaint Process.

(1) All complaints must be written and have complainant's contact information. Complaints will follow Department's Policy and will be investigated by the appropriate Department's staff.

(2) The Department will conduct an interview with the provider regarding the substance of the complaint and allow the provider a reasonable opportunity to respond to the allegations of the complaint.

(3) If the complaint is not deemed meritorious, the provider shall receive written notification from the Department that the complaint is unsubstantiated.

(4) A complaint deemed meritorious against the provider will require the Department to inform the provider in writing within 30 days;

(a) upon receipt of the written notification the provider will submit a corrective action plan within 45 days to the Department for approval. Extensions will be at the discretion of the Department;

(b) if the corrective action plan is determined to be inadequate by the Department, the Department will make recommendations for an agreeable corrective action plan; and

(c) for non-911 providers, the relevant political subdivision will be notified of the complaint and if applicable may issue a Request for Proposal according to 26-8a-405.4(3)(a)(ii)(B)(II).

R426-4-600. Scene and Patient Management.

(1) Upon arrival at the scene of a medical call injury or illness, the field EMS personnel shall establish radio or telephone contact with on-line medical control, as specified by agency protocol.

(2) If radio or telephone contact cannot be obtained, the field EMS personnel shall so indicate on the EMS report form and follow local written protocol;

(3) if there is a licensed physician at the scene who wishes to assist or provide on-scene medical direction to the field EMS personnel, the field EMS personnel may follow his/her instructions, but only until communications are established with on-line medical control. If the proposed treatment from the on-scene physician differs from existing EMS triage, treatment, and transport protocols and is contradictory to quality patient care, the field EMS personnel should revert to existing EMS triage, treatment, and transport protocols for the continued management of the patient.

(a) If the physician at the scene wishes to continue directing the field EMS personnel's activities, the field EMS personnel shall so notify on-line medical control;

(b) the on-line medical control may:

(i) allow the on-scene physician to assume or continue medical control;

(ii) assume medical control, but allowing the physician at the scene to assist; or

(iii) assume medical control with no participation by the on-scene physician.

(c) If on-line medical control allows the on-scene physician to assume or continue medical control, the field EMS personnel shall repeat the on-scene physician's orders to the on-line medical control for evaluation and recording. If, in the judgment of the on-line medical control that is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the on-line medical control may reassume medical control of the field EMS personnel at the scene.

(4) A paramedic tactical rescue may only function at the invitation of the local or state public safety authority. When called upon for assistance, it must immediately notify the local ground ambulance licensee to coordinate patient transportation.

R426-4-700. Pilot Projects.

(1) A person who proposes to undertake a research or study project which requires waiver of any rule must have a project director who is a physician licensed to practice medicine in Utah, and must submit a written proposal to the Department for presentation to the EMS Committee for recommendation.

(2) The proposal shall include the following:

(a) A project description that describes the:

(i) need for project;

(ii) project goal;

(iii) specific objectives;

(iv) approval by the agency off-line medical director;

(v) methodology for the project implementation;

(vi) geographical area involved by the proposed project;

(vii) specific rule or portion of rule to be waived;

(viii) proposed waiver language; and

(ix) evaluation methodology.

(b) A list of the EMS providers and hospitals participating in the project;

(c) a signed statement of endorsement from the participating hospital medical directors and administrators, the director of each participating paramedic and ambulance licensee, other project participants, and other parties who may be significantly affected.

(d) If the pilot project requires the use of additional skills, a description of the skills to be utilized by the field EMS personnel and provision for training and supervising the field EMS personnel who are to utilize these skills, including the names of the field EMS personnel.

(e) The name and signature of the project director attesting to his support and approval of the project proposal.

(3) If the pilot project involves human subjects' research, the applicant must also obtain Department Institutional Review Board approval.

(4) The Department or Committee, as appropriate, may require the applicant to meet additional conditions as it considers necessary or helpful to the success of the project, integrity of the EMS system, and safety to the public.

(5) The Department or Committee, as appropriate, may initially grant project approval for one year. The Department or Committee, as appropriate, may grant approval for continuation beyond the initial year based on the achievement and satisfactory progress as evidenced in written progress reports to be submitted to the Department at least 90 days prior to the end of the approved period. A pilot project may not exceed three years;

(6) the Department or Committee, as appropriate, may only waive a rule if:

(a) the applicant has met the requirements of this section;

(b) the waiver is not inconsistent with statutory requirements;

(c) there is not already another pilot project being conducted on the same subject; and

(d) it finds that the pilot project has the potential to improve pre-hospital medical care.

(7) Approval of a project allows the field EMS personnel listed in the proposal to exercise the specified skills of the participants in the project. The project director shall submit the names of field EMS personnel not initially approved to the Department.

(8) The Department or Committee, as appropriate, may rescind approval for the project at any time if:

(a) Those implementing the project fail to follow the protocols and conditions outlined for the project;

(b) it determines that the waiver is detrimental to public health; or

(c) it determines that the project's risks outweigh the benefits that have been achieved.

(9) The Department or Committee, as appropriate, shall allow the EMS provider involved in the study to appear before

the Department or Committee, as appropriate, to explain and express its views before determining to rescind the waiver for the project.

(10) At least six months prior to the planned completion of the project, the medical director shall submit to the Department a report with the preliminary findings of the project and any recommendations for change in the project requirements.

R426-4-800. Confidentiality of Patient Information.

Licensees, designees, and EMS certified individuals shall not disclose patient information except as necessary for patient care or as allowed by statute or rule.

R426-4-900. Vehicle Supply Requirements.

(1) In accordance with the licensure or designation type and level, the ambulance shall carry on each permitted vehicle the minimum quantities of supplies, medications, and equipment as described in this subsection. Optional items are marked with an asterisk.

(a) For any medication used (whether required or optional) it is the responsibility of the Medical Director to provide the protocols, training, and quality assurance for each crew member.

(b) American Heart Association (AHA) regularly updates the guidelines for acute cardiac care. As a result, certain equipment or medications may be recommended by the most current AHA guidelines that are not included in this rule. Agency medical directors may authorize the use of these new medications or equipment in accordance with such revised AHA guidelines. Waivers for such medications/equipment will not be required, however agencies shall report to the Bureau the use of any AHA recommended medications/equipment not specifically mentioned in this rule.

(c) In times of drug shortages, the Department, in consultation with the State EMS Medical Director, may approve alternative medications as requested, or approve use of medications less than 6 months beyond their expiration date.

(2) Equipment and Supplies:

(a) EMR Quick Response Unit

2 Blood pressure cuffs, one adult, one pediatric

2 Stethoscopes, one adult and one pediatric or combination

2 Heavy duty shears

2 Universal sterile dressings, 9" x 5", 10" x 8", 8" x 9", or equivalent

12 Gauze pads, sterile, 4" x 4"

8 Bandages, self-adhering, soft roller type, 4" x 5 yards or equivalent

2 Rolls of tape

2 Triangular bandages

1 Box of gloves latex free or equivalent

1 Thermometer

1 Biohazard bag

1 Obstetrical kit (includes cord clamp, scissors, scalpel, bulb syringe, drapes, towels, gloves, feminine napkin, biohazard bags)

1 Printed pediatric reference material

1 Commercial tourniquet

Disinfecting agent for cleaning vehicle and equipment of body fluids in accordance with OSHA standards of bleach diluted between 1:10 and 1:100 with water or equivalent

Reflective safety vests one for each crew member OSHA approved

Preventive T.B. Transmission masks (N95 or N100) masks, one for each crew member

Protective eye wear (goggle or face shield), one for each crew member

Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds

Airway Equipment and Supplies:

2 Bag valve mask ventilation units, one adult, one pediatric

1 Portable oxygen apparatus, capable of metered flow with adequate tubing*

2 02 masks, non-rebreather or partial non-rebreather, one adult and one pediatric*

1 Nasal cannula, adult*

Defibrillator Equipment and Supplies

1 Automated External Defibrillator (AED)

Additional Supplies:

1 Irrigation solution 500cc

2 Nerve Antidote Kits (Mark I Kits or DuoDote) for self or peer administration*

(b) EMT Quick Response Unit

2 Blood pressure cuffs, one adult, one pediatric

2 Stethoscopes, one adult and one pediatric or combination

2 Heavy duty shears

2 Universal sterile dressings, 9" x 5", 10" x 8", 8" x 9", or equivalent

12 Gauze pads, sterile, 4" x 4"

8 Bandages, self-adhering, soft roller type, 4" x 5 yards or equivalent

2 Rolls of tape

4 Cervical collars, one adult, one child, one infant, plus one other size

2 Triangular bandages

2 Boxes of gloves, one box non-sterile and one box latex free or equivalent

1 Thermometer

2 Biohazard bags

1 Printed pediatric reference material

1 Obstetrical kit (includes cord clamp, scissors, scalpel, bulb syringe, drapes, towels, gloves, feminine napkin, Biohazard bags)

1 Commercial tourniquet

Disinfecting agent for cleaning vehicle and equipment of body fluids in accordance with OSHA standards of bleach diluted between 1:10 and 1:100 with water or equivalent

Reflective safety vests one for each crew member OSHA approved

Preventive T.B. Transmission masks (N95 or N100) masks, one for each crew member

Protective eye wear (goggle or face shield), one for each crew member

Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds

Hemostatic Gauze or agent*

Glucose measuring device*

Transcutaneous carbon monoxide detector*

Head Immobilization Device*

Spine board (wood must be coated or sealed) *

Immobilization straps*

Multi-use splints*

Whole body vacuum splint*

Inflatable back raft*

Mucosal atomization device*

Airway Equipment and Supplies:

1 Portable or fixed suction, with wide bore tubing and rigid pharyngeal suction tip

1 Oxygen saturation monitor with adult and pediatric probes

2 Bag valve mask ventilation units, one adult, one pediatric, with adult, child, and infant size

1 Bulb syringe, separate from the OB kit

3 Oropharyngeal airways, with one adult, one child, and one infant size

3 Nasopharyngeal airways, one adult, one child, and one infant

1 Water based lubricant, one tube or equivalent
2 02 masks, non-rebreather or partial non-rebreather, one adult and one pediatric
1 Nasal cannula, adult
1 Portable oxygen apparatus, capable of metered flow with adequate tubing
Impedance threshold device*
Defibrillator Equipment and Supplies:
1 Automated external defibrillator (AED), per vehicle or response unit
Automated chest compression device*
Required Drugs:
1 Aspirin bottle Aspirin chewable 81 mg (minimum 8 tablets)
2 Epinephrine auto-injectors, one standard and one junior
1 Irrigation Solution 500cc
2 Oral Glucose tubes concentrated or equivalent
Activated Charcoal 25gm *
Acetaminophen elixir 160mg/5ml*
Ibuprofen (adult and pediatric)*
Naloxone (Intranasal use only)*
Nerve Antidote Kits (Mark I Kits or DuoDote)*
(c) AEMT Quick Response Unit
2 Blood pressure cuffs, one adult, one pediatric
2 Stethoscopes, one adult and one pediatric or combination
2 Heavy duty shears
2 Universal sterile dressings, 9" x 5", 10" x 8", 8" x 9", or equivalent
12 Gauze pads, sterile, 4" x 4"
8 Bandages, self-adhering, soft roller type, 4" x 5 yards or equivalent
2 Rolls of tape
4 Cervical collars, one adult, one child, one infant, plus one other size
2 Triangular bandages
2 Boxes of gloves, one box non-sterile and one box latex free or equivalent
1 Glucose measuring device
1 Thermometer
2 Biohazard bags
1 Printed pediatric reference material
1 Obstetrical kit, includes cord clamp, scissors, scalpel, bulb syringe, drapes, towels, gloves, feminine napkin, Biohazard bags
1 Commercial tourniquet
2 Occlusive sterile dressings or equivalent
Disinfecting agent for cleaning vehicle and equipment of body fluids in accordance with OSHA standards of bleach diluted between 1:10 and 1:100 with water or equivalent
Reflective safety vests one for each crew member OSHA approved
Preventive T.B. Transmission masks (N95 or N100) masks one for each crew member
Protective eye wear (goggle or face shield) one for each crew member
Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds
Hemostatic Gauze or agent*
Transcutaneous carbon monoxide detector*
Head Immobilization Device*
Spine board (wood must be coated or sealed)*
Immobilization straps*
Multi-use splints*
Whole body vacuum splint*
Inflatable back raft*
Airway Equipment and Supplies:
1 Portable or fixed suction, with wide bore tubing and rigid pharyngeal suction tip
1 Oxygen saturation monitor with adult and pediatric probes
2 Bag valve mask ventilation units, one adult, one pediatric, with adult, child, and infant sizes
1 Bulb syringe, separate from the OB kit
3 Oropharyngeal airways, with one adult, one child, and one infant size
3 Nasopharyngeal airways, one adult, one child, and one infant
2 O2 masks, non-rebreather or partial non-rebreather, one adult and one pediatric
1 Nasal cannula, adult
1 Portable oxygen apparatus, capable of metered flow with adequate tubing
2 Small volume nebulizer container for aerosol solutions
2 Magill forceps, one adult, child/infant
1 Cath tip 60cc syringe* (for use with oro-nasogastric tube)
2 Supraglottic airway device (one adult and one pediatric (size)
CPAP device*
1 Water based lubricant, one tube or equivalent*
2 Oro-nasogastric tubes, one adult, and one pediatric*
End-tidal CO2 monitor*
Impedance threshold device*
Defibrillator Equipment and Supplies
1 Defibrillator with ECG display, or automated external defibrillator (AED), portable battery operated, per vehicle or response unit
2 Sets of adult electrode pads for defibrillation
1 12 lead ECG with transmission capability*
Automated chest compression device*
IV Supplies:
10 Alcohol or Iodine preps
2 IV start kits or equivalent
12 Over-the-needle catheters, two each, sizes 14g, 16g, 18g, 20g, 22g and 24g
2 Arm boards
5 IV tubings capable of micro and macro drip chambers, minimum 2 of each
8 Syringes, two each, 60cc, 10cc, 3cc, and 1cc
1 Sharps container
1 Safety razor
2 Saline lock
4 Normal Saline for injection/inhalation
1 Vacutainer holder*
4 Vacutainer tubes*
2 Intraosseous needles, one each 15 or 16, and 18 gauge or delivery device*
Mucosal atomization device*
Morgan lens for ocular irrigation*
Required Drugs:
2 Albuterol Sulfate 2.5mg premixed
1 Aspirin bottle chewable 81 mg (minimum 8 tablets)
2 Dextrose 50% 25gm preload
1 Epinephrine 1:1,000 1cc (1mg/1cc)
2 Epinephrine 1:10,000 1mg each*
1 Glucagon 2 mg
1 Irrigation solution 500cc
2 Naloxone HCL 2mg each
1 Nitroglycerine 0.4mg (tablets or spray)
2 Oral glucose concentrated tubes or equivalent 15g
2 Promethazine HCL 25mg each or ondansetron 8mg, or both*
Ringers Lactate or Normal Saline 4,000cc
may carry at least one benzodiazepine: midazolam, diazepam, or lorazepam*
may carry either Lidocaine or Amiodarone, or both*must carry at least one pain medication: nitrous, morphine, nalbuphine, fentanyl Acetaminophen elixir 160mg/5ml*

Activated Charcoal 25gm *
Amiodarone 300 mg IV*
Atropine Sulfate 1mg each*
Calcium Gluconate*
CyanoKit*
Diazepam*
Diphenhydramine 50 mg*
Fentanyl 200 mcg *
Ibuprofen* (adult and pediatric)
Ipratropium bromide*(nebulized)
Lidocaine (IV for cardiac use)*
Lorazepam*
Midazolam*
Morphine sulfate 10mg*
Nalbuphine 10 mg*
Nerve Agent Antidote kits* (Mark I Kits or DuoDote)
Nitrous oxide and required administration equipment*
Sodium bicarbonate 50 meq*
(d) EMT Ambulance
2 Blood pressure cuffs, one adult, one pediatric
2 Stethoscopes, one adult and one pediatric or combination
2 Pillows, with vinyl cover or single use disposable pillows
2 Emesis basins, emesis bags, or large basins
1 Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds
2 Head immobilization devices or equivalent
2 Lower extremity traction splints or equivalent, one adult and one pediatric
2 Non-traction extremity splints, one upper and one lower
2 Spine boards, one short and one long (wood must be coated or sealed)
1 Full body pediatric immobilization device
2 Heavy duty shears
2 Urinals, one male, one female, or two universal
1 Printed pediatric reference material
2 Blankets
2 Sheets
3 Towels
2 Universal sterile dressings, 9" x 5", 10" x 8", 8" x 9", or equivalent
12 Gauze pads, sterile, 4" x 4"
8 Bandages, self-adhering, soft roller type, 4" x 5 yards or equivalent
2 Rolls of tape
4 Cervical collars, one adult, one child, one infant, plus one other size
2 Triangular bandages
2 Boxes of gloves, one box non-sterile and one box latex free or equivalent
1 Obstetrical kit (includes cord clamp, scissors, scalpel, bulb syringe, drapes, towels, gloves, feminine napkin, biohazard bags)
2 Occlusive sterile dressings or equivalent
1 Thermometer
Water based lubricant, one tube or equivalent
2 Biohazard bags
Glucose measuring device
1 Commercial tourniquet
Car seat or equivalent approved by Federal Safety Standard
Reflective safety vests one for each crew member OSHA approved
Preventive T.B. transmission masks (N95 or N100) masks one for each crew member
Protective eye wear (goggles or face shields) one for each crew member
Full body substance isolation protection one for each crew member
Disinfecting agent for cleaning vehicle and equipment of body fluids in accordance with OSHA standards of bleach diluted between 1:10 and 1:100 with water or equivalent
Hemostatic Gauze or agent*
Whole body vacuum splint*
Inflatable back raft*
Transcutaneous carbon monoxide detector*
Mucosal atomization device*
Airway Equipment and Supplies
1 Portable and fixed suction, with wide bore tubing and rigid pharyngeal suction tip
1 Oxygen saturation monitor with adult and pediatric probes
2 Bag valve mask ventilation units, one adult, one pediatric, with adult, child, and infant size
1 Bulb syringe, separate from the OB kit
3 Oropharyngeal airways, with one adult, one child, and one infant size
3 Nasopharyngeal airways, one adult, one child, and one infant
4 O2 masks, non-rebreather or partial non-rebreather, two adult and two pediatric
2 Nasal cannulas, adult
Portable oxygen apparatus, capable of metered flow with adequate tubing
1 Permanent large capacity oxygen delivery system
Impedance threshold device*
Automated transport ventilator*
Defibrillator Equipment and Supplies:
Automated external defibrillator (AED), per vehicle or response unit
Automated chest compression device*
Required Drugs
1 Aspirin bottle chewable 81 mg (minimum 8 tablets)
2 Epinephrine auto-injectors, one standard and one junior
1 Irrigation Solution 500cc
2 Oral Glucose tubes concentrated or equivalent
Activated Charcoal 25gm *
Acetaminophen elixir 160mg/5ml*
Ibuprofen (adult and pediatric)*
Naloxone (Intranasal use only)*
Nerve Antidote Kits (Mark I Kits or DuoDote)*
(e) AEMT Ambulance
2 Blood pressure cuffs, one adult, one pediatric
2 Stethoscopes, one adult and one pediatric or combination
2 Pillows, with vinyl cover or single use disposable pillows
2 Emesis basins, emesis bags, or large basins
2 Head immobilization devices or equivalent
2 Lower extremity traction splints or equivalent, one adult and one pediatric
2 Non-traction extremity splints, one upper and one lower
2 Spine boards, one short and one long (Wood must be coated or sealed)
1 Full body pediatric immobilization device
2 Heavy duty shears
2 Urinals, one male, one female, or two universal
1 Printed pediatric reference material
2 Blankets
2 Sheets
3 Towels
2 Universal sterile dressings, 9" x 5", 10" x 8", 8" x 9", or equivalent
12 Gauze pads, sterile, 4" x 4"
8 Bandages, self-adhering, soft roller type, 4" x 5 yards or equivalent
2 Rolls of tape
4 Cervical collars, three adult and one pediatric or equivalent
2 Triangular bandages
2 Boxes of gloves, one box non-sterile and one box latex

free or equivalent
1 Obstetrical kit (includes cord clamp, scissors, scalpel, bulb syringe, drapes, towels, gloves,
feminine napkins, biohazard bags)
2 Occlusive sterile dressings or equivalent
1 Thermometer
2 Biohazard bags
1 Glucose measuring device
1 Commercial tourniquet
1 Car seat or equivalent approved by Federal Safety Standard
Preventive T.B. transmission masks (N95 or N100) masks one for each crew member
Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds
Protective eye wear (goggles or face shields) one for each crew member
Full body substance isolation protection one for each crew member
Reflective safety vests one for each crew member OSHA approved
Disinfecting agent for cleaning vehicle and equipment of body fluids in accordance with OSHA standards of bleach diluted between 1:10 and 1:100 with water or equivalent
Hemostatic Gauze or agent*
Whole body vacuum splint*
Inflatable back raft*
Transcutaneous carbon monoxide detector*
Airway Equipment and Supplies:
1 Portable and fixed suction, with wide bore tubing and rigid pharyngeal suction tip
1 Oxygen saturation monitor with adult and pediatric probes
2 Bag valve mask ventilation units, one adult, one pediatric, with adult, child, and infant size
1 Bulb syringe, separate from the OB kit
3 Oropharyngeal airways, with one adult, one child, and one infant size
3 Nasopharyngeal airways, one adult, one child, and one infant
4 O2 masks, non-rebreather or partial non-rebreather, two adult and two pediatric
2 Nasal cannulas, adult
1 Portable oxygen apparatus, capable of metered flow with adequate tubing
1 Permanent large capacity oxygen delivery system
2 Small volume nebulizer container for aerosol solutions
2 Magill forceps, one adult, child/infant
1 Cath tip 60cc syringe* (for use with oro-nasogastric tube)
1 Water based lubricant, one tube or equivalent
2 Oro-nasogastric tubes, one adult, and one pediatric*
2 Supraglottic airway device (one adult and one pediatric size)
CPAP device*
Impedance threshold device*
End tidal CO2 Monitor*
Automated transport ventilator*
Morgan lens for ocular irrigation*
Defibrillator Equipment and Supplies:
1 Defibrillator with ECG display, or automated external defibrillator (AED), portable battery operated, per vehicle or response unit
2 Sets of adult electrode pads for defibrillation
1 12 lead ECG with transmission capability*
Automated chest compression device*
IV Supplies:
10 Alcohol or Iodine prep
2 V start kits or equivalent
12 Over-the-needle catheters, two each, sizes 14g, 16g, 18g, 20g, 22g and 24g
2 Arm boards
5 IV tubings capable of micro and macro drip chambers, minimum 2 of each
5 Extension tubings
8 Syringes, two each, 60cc, 10cc, 3cc, and 1cc
1 Three-way stopcock
1 Sharps container
1 Safety razor
2 Saline lock
4 Normal Saline for injection/inhalation
2 Intraosseous needles, one each, 15 or 16, and 18 gauge or delivery device*
1 Volutrol Pediatric IV chamber*
Mucosal atomization device*
Vacutainer holder*
Vacutainer tubes*
Required Drugs:
2 Albuterol Sulfate 2.5mg premixed
1 Aspirin bottle chewable 81 mg (minimum 8 tablets)
2 Dextrose 50% 25gm preload
1 Epinephrine 1:1,000 1cc (1mg/1cc)
2 Epinephrine 1:10,000 1mg each*
1 Glucagon 2 mg
1 Irrigation solution 500cc
2 Naloxone HCL 2mg each
1 Nitroglycerine 0.4mg (tablets or spray)
2 Oral glucose concentrated tubes or equivalent 15g
2 Promethazine HCL 25mg each or ondansetron 8mg, or both*
Ringers Lactate or Normal Saline 4,000cc
may carry at least one benzodiazepine: midazolam, diazepam, or lorazepam*
may carry either Lidocaine or Amiodarone, or both*
must carry at least one pain medication: nitrous, morphine, nalbuphine, fentanyl
Acetaminophen elixir 160mg/5ml*
Activated Charcoal 25gm *
Amiodarone 300 mg IV*
Atropine Sulfate 1mg each*
Calcium Gluconate*
CyanoKit*
Diazepam*
Diphenhydramine 50 mg*
Fentanyl 200 mcg *
Ibuprofen* (adult and pediatric)
Ipratropium bromide*(nebulized)
Lidocaine (IV for cardiac use)*
Lorazepam*
Midazolam*
Morphine sulfate 10mg*
Nalbuphine 10 mg*
Nerve Agent Antidote kits* (Mark I Kits or DuoDote)
Nitrous oxide and required administration equipment*
Sodium bicarbonate 50mEg each*
(f) Intermediate Advanced Ambulance
2 Blood pressure cuffs, one adult, one pediatric
2 Stethoscopes, one adult and one pediatric or combination
2 Pillows, with vinyl cover or single use disposable pillows
2 Emesis basins, emesis bags, or large basins
2 Head immobilization devices or equivalent
2 Lower extremity traction splints or equivalent, one adult and one pediatric
2 Non-traction extremity splints, one upper, one lower, or PASG pants
2 Spine boards, one short and one long (Wood must be coated or sealed)
1 Full body pediatric immobilization device

2 Heavy duty shears
2 Urinals, one male, one female, or two universal
1 Printed Pediatric Reference Material
2 Blankets
2 Sheets
3 Towels
1 Commercial Tourniquet
2 Universal sterile dressings, 9" x 5", 10" x 8", 8" x 9", or equivalent
12 Gauze pads, sterile, 4" x 4"
8 Bandages, self-adhering, soft roller type, 4" x 5 yards or equivalent
2 Rolls of tape
4 Cervical collars, three adult and one pediatric or equivalent
2 Triangular bandages
2 Boxes of gloves, one box non-sterile and one box latex free or equivalent
1 Obstetrical kit (includes cord clamp, scissors, scalpel, bulb syringe, drapes, towels, gloves, feminine napkins, biohazard bags)
2 Occlusive sterile dressings or equivalent
1 Thermometer or equivalent
2 Biohazard bags
1 Glucose measuring device
Car seat or equivalent approved by Federal Safety Standard
Preventive T.B. transmission masks (N95 or N100) masks one for each crew member
Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds
Protective eye wear (goggles or face shields) one for each crew member
Full body substance isolation protection one for each crew member
Reflective safety vests one for each crew member OSHA approved
Disinfecting agent for cleaning vehicle and equipment of body fluids in accordance with OSHA standards of bleach diluted between 1:10 and 1:100 with water or equivalent
Hemostatic Gauze or agent*
Whole body vacuum splint*
Inflatable back raft*
Transcutaneous carbon monoxide detector*
Airway Equipment and Supplies:
1 Portable or fixed suction, with wide bore tubing and rigid pharyngeal suction tip
2 Bag mask ventilation units, one adult, one pediatric, with adult, child, and infant size masks
1 Baby syringe, bulb type, separate from the OB kit
3 Oropharyngeal airways, with one adult, one child, and one infant size
3 Nasopharyngeal airways, one adult, one child, and one infant
2 Magill forceps, one adult and one child
4 Non-rebreather or partial non-rebreather oxygen masks, two adult and two pediatric
2 Nasal cannulas, adult
1 Portable oxygen apparatus, capable of metered flow with adequate tubing
1 Oxygen saturation monitor
1 Permanent large capacity oxygen delivery system
2 Small volume nebulizer container for aerosol solutions
1 Laryngoscope with batteries curved and straight blades with bulbs and two extra batteries and two extra bulbs
1 Water based lubricant, one tube or equivalent
7 Endotracheal tubes, one each: cuffed 8, 7.5, 7, 6, uncuffed 5, 4, 3
2 Endotracheal tube stylets, one pediatric and one adult
1 Device for securing the endotracheal tube
2 Endotracheal tube confirmation device
2 Flexible sterile endotracheal suction catheters from 5-12 french
2 Oro-nasogastric tubes, one adult, and one pediatric
2 Supraglottic airway device (one adult and one pediatric size)
Video laryngoscope*
Bougie device*
CPAP device*
Impedance threshold device*
End tidal CO2 Monitor*
Automated transport ventilator*
Morgan lens for ocular irrigation*
Defibrillator Equipment and Supplies:
1 Portable cardiac monitor/defibrillator/pacer with adult and pediatric capabilities
2 Sets Electrodes or equivalent
2 Sets Combination type defibrillator pads pacing/cardioversion/defibrillator
1 12 lead ECG with transmission capability*
Automated chest compression device*
IV Supplies:
10 Alcohol or Iodine preps
2 IV start kits or equivalent
12 Over-the-needle catheters, two each, sizes 14g, 16g, 18g, 20g, 22g and 24g
2 Arm boards
5 IV tubings capable of micro and macro drip chambers, minimum 2 of each
8 Syringes, two each, 60cc, 10cc, 3cc, and 1cc
1 Cath tip 60cc syringe
1 Three-way stopcock
1 Sharps container
1 Safety razor
2 Saline lock
4 Normal Saline for injection/inhalation
2 Intraosseous needles, one each, 15 or 16, and 18 gauge or delivery device
1 Volutrol Pediatric IV chamber*
Mucosal atomization device*
Vacutainer holder*
Vacutainer tubes*
Required Drugs:
2 Albuterol Sulfate 2.5mg premixed
1 Aspirin bottle chewable 81 mg (minimum 8 tablets)
2 Atropine Sulfate 1mg
2 Dextrose 50% or Glucagon (must have 1 D50)
2 Diphenhydramine intravenous 50mg each
1 Epinephrine 1:1,000 15mg or equivalent
2 Epinephrine 1:10,000 1mg each
1 Irrigation solution 500cc
2 Morphine Sulfate 10mg
2 Naloxone HCL 2mg each
1 Nitroglycerine bottle 0.4mg (tablets or spray)
2 Oral glucose concentrated tubes or equivalent
2 Promethazine HCL 25mg each or ondansetron 8mg, or both
1 Ringers Lactate or Normal Saline 4,000cc
must carry at least one benzodiazepine: midazolam, diazepam, or lorazepam*
must carry either Lidocaine or Amiodarone, or both*
must carry at least one pain medication: nitrous, morphine, nalbuphine, fentanyl
Acetaminophen elixir 160mg/5ml*
Activated Charcoal 25gm*
Adenosine*
Amiodarone 300 mg IV*
Calcium Gluconate*

CyanoKit*
Diazepam*
Fentanyl 200 mcg*
Furosemide*
Ibuprofen* (adult or pediatric)
Ipratropium bromide*(nebulized)
Lidocaine (IV for cardiac use)*
Lorazapam*
Midazolam*
Nalbuphine 10 mg*
Nerve Agent Antidote kits (Mark I Kits or DuoDote)*
Nitrous oxide and required administration equipment*

(g) Paramedic Services (Rescue, Transfer and Ambulance Units)

2 Blood pressure cuffs, one adult, one pediatric
2 Stethoscopes, one adult and one pediatric or combination
1 Thermometer
1 Glucose measuring device
2 Head immobilization devices or equivalent
2 Lower extremity traction splints or equivalent, one adult and one pediatric
2 Non-traction extremity splints, one upper and one lower
2 Spine boards, one short and one long. Wooden boards must be coated or sealed
1 Full body pediatric immobilization device. (Paramedic rescue units excluded)
2 Heavy duty shears
2 Blankets
3 Towels
2 Universal sterile dressings, 9" x 5", 10" x 8", 8" x 9", or equivalent
12 Gauze pads, sterile, 4" x 4".
8 Bandages, self-adhering, soft roller type, 4" x 5 yards or equivalent
2 Rolls of tape
4 Cervical collars, three adult and one pediatric or equivalent
2 Triangular bandages
2 Boxes of gloves, one box non-sterile and one box latex free or equivalent
1 Obstetrical kits (includes cord clamp, scissors, scalpel, bulb syringe, drapes, towels, gloves, feminine napkins, biohazard bags)
2 Occlusive sterile dressings or equivalent
2 Emesis basins, emesis bags, or large basins
1 Printed pediatric reference material
2 Urinals, one male, one female, or two universal
2 Pillows with vinyl cover or single use disposable pillows (paramedic rescue units excluded)
2 Sheets (paramedic rescue units excluded)
1 Commercial Tourniquet
2 Biohazard bags
Car seat or equivalent approved by Federal Safety Standard - (paramedic rescue units excluded) change definition
Preventive T.B. transmission masks (N95 or N100) masks one for each crew member
Fire extinguisher, with current inspection sticker, of the dry chemical type with a rating of 2A10BC or halogen extinguisher of minimum weight 2.5 - 10 pounds
Protective eye wear (goggles or face shields) one for each crew member
Full body substance isolation protection one for each crew member
Reflective safety vests one for each crew member OSHA approved
Disinfecting agent for cleaning vehicle and equipment of body fluids in accordance with OSHA standards of bleach diluted between 1:10 and 1:100 with water or equivalent
Hemostatic Gauze or agent*
Whole body vacuum splint*
Inflatable back raft*
Transcutaneous carbon monoxide detector*

Airway Equipment and Supplies:

1 Portable and fixed suction, with wide bore tubing and rigid pharyngeal suction tip
1 Portable suction unit, with wide bore tubing and rigid pharyngeal suction tip - (paramedic rescue units only)
1 Oxygen saturation monitor with adult and pediatric probes
1 Bulb syringe separate from the OB kit
1 Laryngoscope with batteries curved and straight blades with bulbs and two extra batteries and two extra bulbs
Video laryngoscope*
Bougie device*
1Water based lubricant, one tube or equivalent
11 Endotracheal tubes, one each, uncuffed 3, 3.5 4, 4.5 and 5, cuffed 5.5, 6, 6.5, 7, 7.5, 8
2 Endotracheal tube stylets, one pediatric and one adult
1 Device for securing the endotracheal tube
2 Endotracheal tube confirmation devices
2 Flexible sterile endotracheal suction catheters from 5-12 french
3 Oropharyngeal airways, one adult, one child, and one infant size
3 Nasopharyngel airways, one adult, one child, and one infant size
2 Magill forceps, one child and one adult/infant
1 Portable oxygen apparatus, capable of metered flow with adequate tubing
2 Oro-nasogastric tubes, one adult, and one pediatric
4 O2 masks, non-rebreather or partial non-rebreather, two adult and two pediatric
2 Nasal cannulas, adult
2 Bag mask ventilation units, one adult, one pediatric, with adult, child, and infant size masks
2 Tongue blades
1 Meconium aspirator
1 Cricothyroidotomy kit
2 Small volume nebulizer container for aerosol solutions
1 Permanent large capacity oxygen delivery system (paramedic rescue units excluded)
2 Supraglottic airway device (one adult and one pediatric size)
CPAP Device*
Impedance Threshold Device*
End tidal CO2 Monitor*
Automated transport ventilator*
Morgan lens for ocular irrigation*
Portable Sonographic device*

Defibrillator Equipment and Supplies:

1 Portable cardiac monitor/defibrillator/pacer with adult and pediatric capabilities
2 Sets Electrodes or equivalent
2 Sets Combination type defibrillator pads pacing/cardioversion/defibrillator
1 12 lead ECG with transmission capability*
Automated chest compression device*

IV Supplies:

10 Alcohol or iodine preps
2 IV start kits or equivalent
12 Over-the-needle catheters, two each, sizes 14g, 16g, 18g, 20g, 22g, 24g
2 Intraosseous needles, one each, 15 or 16, and 18 gauge or delivery device
2 Arm boards
5 IV tubings capable of micro and macro drip chambers, minimum 2 of each
2 IV tubings with blood administration sets

1 Volutrol Pediatric IV chamber
8 Syringes, two each, 60cc, 10cc, 3cc, and 1cc
2 Saline lock
4 Normal Saline for injection/inhalation
1 Cath tipped syringe, 60cc
2 Three-way stopcocks
1 Sharps container
1 Safety razor
1 Cath tipped syringe, 30cc*
Vacutainer holder*
Vacutainer multiple sample luer adapters*
Vacutainer tubes*
Mucosal atomization device*
IV Infusion pumps*
Required Drugs:
2 Albuterol Sulfate 2.5mg pre-mixed
1 Aspirin bottle 81 mg chewable (minimum 8 tablets)
2 Atropine Sulfate 1mg
2 Dextrose 50% preload
2 Diphenhydramine intravenous 50mg each
2 Dopamine HCL 400mg each or 2 mics/ml Epinephrine drip (2cc Epinephrine 1:1,000 to 1000cc LR% or NS), or both
1 Epinephrine 1:1,000 15mg or equivalent
2 Epinephrine 1:10,000 1mg each
1 Glucagon 2 mg
1 Irrigation solution 500cc
4 Naloxone HCL 2mg each
1 Nitroglycerine bottle 0.4mg (tablets or spray)
2 Oral Glucose concentrated 15g tubes or equivalent
2 Promethazine HCL 25mg each or ondansetron 8mg, or both
Ringers Lactate or Normal Saline 4,000cc
2 Sodium Bicarbonate 50mEg each
must carry at least one benzodiazepine: midazolam, diazepam, or lorazepam*
must carry either Lidocaine or Amiodarone, or both*
must carry at least one pain medication: nitrous, morphine, nalbuphine, fentanyl,
hydromorphone, or meperidine
Acetaminophen 160mg/5ml*
1 Activated Charcoal 25gm *
Adenosine*
2 Amiodarone 300 mg IV*
Calcium Gluconate*
CyanoKit*
Diazepam*
Droperidol*
Fentanyl 200 mcg*
Furosemide*
Haloperidol*
Hydromorphone*
Ibuprofen* (adult or pediatric)
Ipratropium bromide* (nebulized)
2 Lidocaine* (IV for cardiac use)
Lorazapam*
Magnesium Sulfate*
Meperidine*
Midazolam*
2 Morphine Sulfate 10mg each*
Nalbuphine 10mg*
Nerve Agent Antidote kits*(Mark I Kits or DuoDote)
Nitrous oxide and required administration equipment*
Oxytocin*
Procainamide*
Vasopressin*
Vecuronium* (only for therapeutic hypothermia protocol)

(3) If a licensed or designated agency desires to carry different equipment, supplies, or medication from the vehicle supply requirements, it must submit a written request from the off-line medical director to the Department requesting the waiver. The request shall include:

(a) a detailed training outline;
(b) protocols;
(c) proficiency testing;
(d) support documentation;
(e) local EMS Council or committee comments; and
(f) a detailed letter of justification.

(4) All equipment, except disposable items, shall be so designed, constructed, and of such materials that under normal conditions and operations, it is durable and capable of withstanding repeated cleaning. The permittee agency:

(a) Shall clean the equipment after each use in accordance with OSHA standards;
(b) shall sanitize or sterilize equipment prior to reuse;
(c) may not reuse equipment intended for single use;
(d) shall clean and change linens after each use; and
(e) shall store or secure all equipment in a readily accessible and protected manner and in a manner to prevent its movement during a crash.

(5) The permittee agency shall have all tested, maintain all equipment, and calibrated in according to with the manufacturer's standards.

(a) The permittee agency shall document all equipment inspections, testing, and maintenance. and calibrations. Testing or calibration conducted by an outside service shall be documented and available for Department review.

(b) an permittee agency required to carry any of the following equipment shall perform monthly inspections to ensure its ability to function correctly:

(i) defibrillator, manual, or automatic;
(ii) autovent;
(iii) infusion pump;
(iv) glucometer;
(v) flow restricted, oxygen-powered ventilation devices;
(vi) suction equipment;
(vii) electronic Doppler device;
(viii) automatic blood pressure/pulse measuring device; and
(ix) pulse oximeter.
(x) any other electronic, battery powered, or critical care device.

(6) All pieces of required equipment that require consumables for the operation of the equipment; power supplies; electrical cables, pneumatic power lines, hydraulic power lines, or related connectors, the permittee shall perform monthly inspections to ensure their correct function.

(7) A ground ambulance licensee shall store all medications according to the manufacturers' recommendations.

(a) for temperature control and packaging requirements; and

(b) return to the supplier for replacement of any medication known or suspected to have been subjected to temperatures outside the recommended range.

R426-4-1000. Air Ambulance Supply Requirements.

(1) Air ambulance vehicle requirements are as follows:

(a) The air ambulance must have sufficient space to accommodate at least one patient on a stretcher;

(b) the air ambulance must have sufficient space to accommodate at least two medical attendant seas; and

(c) the patient stretcher shall be FAA-approved.

(i) it must be installed using the FAA 337 form or a "Supplemental Type Certificate";

(ii) the stretcher shall be of sufficient length and width to support a patient in full supine position who is ranked as a 95th percentile American male that is 6 feet tall and weighing 212 pounds; and

(iii) The head of the stretcher shall be capable of being

elevated at least 30 degrees.

(d) the air ambulance doors shall be large enough to allow a stretcher to be loaded without rotating it moe than 30 degrees about the longitudinal roll axis, or 45 degrees about the lateral pitch axis;

(e) the stretcher shall be positioned so as to allow the medical attendants a clear view and access to any part of the patient's body that may require medical attention. Seat-belted medical attendants must have access to the patient's head and upper body;

(f) the patient, stretcher, attendants, seats, and equipment shall be so arranged as to not block the pilot, medical attendants, or patients from easily exiting the air ambulance;

(g) the air ambulance shall have FAA- approved two point safety belts and security restraints adequate to stabilize and secure any patient, patient stretcher, medical attendants, pilots, or other individuals;

(h) the air ambulance shall have a temperature and ventilation system for the patient treatment area;

(i) the patient area shall have overhead or dome lighting of at least 40-foot candle at the patient level, to allow adequate patient care. During night operations the pilot's cockpit shall be protected from light originating from the patient care area;

(j) the air ambulance shall have a self-contained interior lighting system powered by a battery pack or portable light with a battery source;

(k) the pilots, flight controls, power levers, and radios shall be physically protected from any intended or accidental interference by patient, air medical personnel or equipment and supplies;

(l) the patient must be sufficiently isolated from the cockpit to minimize in-flight distractions and interference which would affect flight safety;

(m) the interior surfaces shall be of material easily cleaned, sanitized, and designed for patient safety. Protruding sharp edges and corners shall be padded;

(n) patients whose medical problems may be adversely affected by changes in altitude may only be transported in a pressurized air ambulance;

(o) the air medical service shall provide all medical attendants with sound ear protectors sufficient to reduce excessive noise pollution arising from the air ambulance during flight; and

(p) there shall be sufficient medical oxygen to assure adequate delivery of oxygen necessary to meet the patient medical needs and anticipated in-flight complications. The medical oxygen must:

(i) Be installed according to FAA regulation;

(ii) have an oxygen flow rate determined by in-line pressure gauges mounted in the patient care area with each outlet clearly identified and within reach of a seat-belted medical attendant;

(iii) allow the oxygen flow to be stopped at or near the oxygen source from inside the air ambulance;

(iv) have gauges that easily identify the quantity of medical oxygen available;

(v) be capable of delivering fifteen liters/minute at fifty psi;

(vi) have a portable oxygen bottle available for use during patient transfer to and from the air ambulance;

(vii) have a fixed back-up source of medical oxygen in the event of an oxygen system failure;

(viii) the oxygen flow meters shall be recessed, padded, or by other means mounted to prevent injury to patients or medical attendants; and

(ix) "No smoking" signs shall be prominently displayed inside the air ambulance.

(q) the air ambulance electric power must be provided through a power source capable to operate the medical equipment and a back-up source of electric power capable of operating all electrically powered medical equipment for one hour;

(r) the air ambulance must have at least two positive locking devices for intravenous containers padded, recessed, or mounted to prevent injury to air ambulance occupants;

(s) the containers shall be within reach of a seat-belted medical attendant;

(t) the air ambulance must be fitted with a metal hard lock container, fastened by hard point restraints to the air ambulance, or must have a locking cargo bay for all controlled substances left in an unattended;

(u) an air ambulance shall have properly maintained survival gear appropriate to the service area and number of occupants;

(v) an air ambulance shall have an equipment configuration that is installed according to FAA criteria and in such a way that the air medical personnel can provide patient care;

(w) the air ambulance shall be configured in such a way that the air medical personnel have access to the patient in order to begin and maintain basic and advanced life support care;

(x) the air ambulance shall have space necessary to allow patient airway maintenance and to provide adequate ventilatory support from the secured, seat-belted position of the medical personnel;

(y) be knowledgeable in the application, operation, care, and removal of all medical equipment used in the care of the patient.

(z) The air medical personnel shall have a knowledge of potential in-flight complications, which may arise from the use of the medical equipment and its in-flight capabilities and limitations; and

(2) have available during transport, a current copy of all written protocols authorized for use by the air medical service medical director. Patient care shall be governed by these authorized written protocols.

R426-4-1100. Air Ambulance Equipment Standards.

(1) Air ambulances must maintain minimum quantities of supplies and equipment for each air medical transport as listed in the document R426 Appendix in accordance with the air medical service's licensure level. Due to weight and safety concerns on specialized air transports, the air medical service medical director shall insure that the appropriate equipment is carried according to the needs of the patient to be transported. All medications shall be stored according to manufacturer recommendations.

(2) All medical equipment except disposable items, shall be designed, constructed, and made of materials that under normal conditions and operations are durable and capable of withstanding repeated cleaning.

(3) The equipment and medical supplies shall be maintained in working condition and within legal specifications.

(4) All non-disposable equipment shall be cleaned or sanitized after each air medical transport.

(5) Medical equipment shall be stored and readily accessible by air medical personnel.

(6) Before departing, the air medical personnel shall notify the pilot of any add-on equipment for weight and balance considerations.

(7) Physical or chemical restraints must be available and used for combative patients who could possibly hurt themselves or any other person in the air ambulance.

R426-4-1200. Air Ambulance Operational Standards.

(1) The pilot may refuse transport to any individual who the pilot considers to be a safety hazard to the air ambulance or any of its passengers.

(2) Records made for each trip on forms or data format specified by the Department and a copy shall remain at the receiving facility for continuity of care.

(3) The air medical service must maintain a personnel file for personnel, which shall include their qualifications and training.

(4) All air medical services must have an operational manual or policy and procedures manual available for all air medical personnel.

(5) All air medical service records shall be available for inspection by representatives of the Department.

(6) All air ambulances shall be equipped to allow air medical service personnel to be able to:

(a) Communicate with hospital emergency medical departments, flight operations centers, air traffic control, emergency medical services, and law enforcement agencies.

(b) Communicate with other air ambulances while in flight.

(i) The pilot must be able to override any radio or telephone transmission in the event of an emergency.

(7) The management of the air medical service shall be familiar with the federal regulations related to air medical services.

(8) Each air medical service must have a safety committee, with a designated safety officer. The committee shall meet at least quarterly to review safety issues and submit a written report to the air medical service management and maintain a copy on file at the air medical service office.

(9) All air medical service shall have a quality management team and a program implemented by this team to assess and improve the quality of patient care provided by the air medical service.

R426-4-1300. Penalties.

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6 and/or suspension or revocation of license(s).

KEY: emergency medical services
October 18, 2013 26-8a

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-5. Emergency Medical Services Training and Certification Standards.
R426-5-100. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a to provide uniform minimum standards to be met by those providing emergency medical services in the State of Utah; and for the training, certification, and recertification of individuals who provide emergency medical service and for those providing instructions and training to pre-hospital emergency medical care providers.

(2) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-5-200. Scope of Practice.

(1) The Department may certify as an EMR, EMT, AEMT, EMT-IA Paramedic, or EMD an individual who meets the initial certification requirements in this rule.

(2) The Committee adopts as the standard for EMR, EMT, AEMT, EMT-IA, or Paramedic training and competency in the state, the following United States Department of Transportation's National Emergency Medical Services Education Standards.

(3) An EMR, EMT, AEMT, or Paramedic may perform the skills as described in the EMS National Education Standards, to their level of certification, as adopted in this section.

(4) Per Utah Code section 41-6a-523 persons authorized to draw blood/immunity from liability and section 53-10-405 DNA specimen analysis -- Saliva sample to be obtained -- Blood sample to be drawn by a professional. Acting at the request of a peace officer a paramedic may draw field blood samples to determine alcohol or drug content and for DNA analysis. Acting at the request of a peace officer an AEMT may draw field blood samples to determine alcohol or drug content and for DNA analysis if they have received certification pursuant to administrative rule R438-12. A person authorized by this section to draw blood samples may not be held criminally or civilly liable if drawn in a medically acceptable manner.

R426-5-300. Certification.

(1) The Department may certify an EMR, EMT, EMT-IA, AEMT, Paramedic, or EMD for a four-year period.

(2) An individual who wishes to become certified as a EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD must:

(a) successfully complete a Department-approved EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD course as described in this rule;

(b) be able to perform the functions listed in the National EMS Education Standards adopted in this rule as verified by personal attestation and successful accomplishment by certified EMS Instructors during the course;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for an EMR, EMT, AEMT, Paramedic, or EMD certification;

(d) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(e) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(f) maintain and submit documentation of having completed a Department approved CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Healthcare Provider Cardiopulmonary Resuscitation (CPR) and Emergency Cardiac Care (ECC); and

(g) submit TB test results as per R426-5-700.

(3) Age requirements:

(a) EMR may certify at 16 years of age or older; and

(b) EMT, AEMT, and Paramedic may certify at 18 years of age or older.

(4) Within 120 days after the official course end date the applicant must successfully complete the Department written and practical EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD examinations, or reexaminations, if necessary.

(5) Test development, the Department shall:

(a) develop or approve written and practical tests for each certification;

(b) establish the passing score for certification and recertification written and practical tests;

(c) the Department may administer the tests or delegate the administration of any test to another entity; and

(d) the Department may release only to the individual who took the test and to persons who have a signed release from the individual who took the test:

(i) whether the individual passed or failed a written or practical test; and

(ii) the subject areas where items were missed on a written or practical test.

(6) An individual who fails any part of the EMR, EMT, AEMT, Paramedic, or EMD certification or recertification written or practical examination may retake the examination twice without further course work.

(7) If the individual fails both re-examinations, he must take a complete EMR, EMT, AEMT, Paramedic, or EMD training course respective to the certification level sought to be eligible for further examination.

(8) The individual may retake the course as many times as he desires, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual must pass both the practical and written test administered after completion of the new course.

(9) An individual who wishes to enroll in an AEMT or Paramedic course must have as a minimum a Utah EMT certification. This Certification must remain current until new certification level is obtained.

(10) The Department may extend the time limits for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

R426-5-400. Certification at a Lower Level.

(1) An individual who has taken a Paramedic course, but has not been recommended for certification, may request to become certified at the AEMT levels if:

(a) the paramedic course coordinator submits to the Department a favorable letter of recommendation stating that the individual has successfully obtained the knowledge and skills of the AEMT level as required by this rule; and

(b) the individual successfully completes all requirements for an AEMT.

R426-5-500. Certification Challenges.

(1) The Department may certify as an EMT or AEMT; a registered nurse licensed in Utah, a nurse practitioner licensed in Utah, a physician assistant licensed in Utah, or a physician licensed in Utah who:

(a) is able to demonstrate knowledge, proficiency and competency to perform all the functions listed in the National EMS Education Standards as verified by personal attestation and successful demonstration to a currently certified course

coordinator and an off-line medical director of all cognitive, affective, and psychomotor skills listed in the National EMS Education Standards;

(b) has a knowledge of:

(i) medical control protocols;

(ii) state and local protocols; and

(iii) the role and responsibilities of an EMT or AEMT respectively.

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for adult and pediatric healthcare provider CPR and ECC; and

(d) is 18 years of age or older.

(e) each level must be challenged sequentially and individually

(2) To become certified, the applicant must:

(a) submit three letters of recommendation from health care providers attesting to the applicant's patient care skills and abilities;

(b) submit a favorable recommendation from a currently certified course coordinator attesting to competency of all knowledge and skills contained within the National EMS Education Standards;

(c) submit the applicable fees and a completed application, including social security number, signature, and, proof of current Utah license as a Registered Nurse, a Physician Assistant, or a Medical Doctor;

(d) within 120 days after submitting the challenge application, successfully complete the Department written and practical EMT examinations, or reexaminations, if necessary;

(e) the Department may extend the time limit for an individual who demonstrates that the inability to meet the requirements within 120 days was due to circumstances beyond the applicant's control;

(f) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years; and

(g) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to submitting the application.

R426-5-600. Recertification Requirements.

(1) The Department may recertify an individual for a four-year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Adult and Pediatric Healthcare Provider CPR and ECC. CPR must be kept current during certification;

(d) submit TB test results as per R426-5-700;

(e) successfully complete the Department applicable written and practical recertification examinations, or reexaminations if necessary, within one year prior to expiration; and

(f) provide documentation of completion of Department-approved CME requirements.

(3) The EMR, EMT, AEMT, EMT-IA and Paramedic must complete the required CME hours, as outlined in the department's Recertification Protocol for EMS Personnel manual and in accordance with the National EMS Education Standards. The hours must be completed throughout the prior four years.

(4) As well as requirements in (2)(c) The following course completion documentation is required for the specific certification level and may be included in the CME required hours:

(a) EMR 52 hours of CME.

(b) EMT 98 hours of CME.

(c) AEMT 108 hours of CME.

(d) EMT-IA 108 hours of CME.

(e) Paramedic 144 hours of CME; and,

(f) EMD 48 hours of CME.

(5) An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD may complete CME hours through various methodologies, but 30 percent of the CME hours must be practical hands-on training.

(6) All CME must be related to the required skills and knowledge of the EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD's level of certification.

(7) The CME Instructors need not be certified EMS instructors, but must be knowledgeable in the subject matter.

(8) The EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD must complete and provide documentation of demonstrating the psychomotor skills listed in the current National EMS Education Standards at their level of certification.

(9) An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD who is affiliated with an EMS organization should have the organization's designated training officer submit a letter verifying the completion of the recertification requirements. An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD who is not affiliated with an agency must submit verification of all recertification requirements directly to the Department.

(10) An AEMT, EMT-IA or Paramedic must submit a letter from a certified off-line medical director recommending the individual for recertification and verifying the individual has demonstrated proficiency in the psychomotor skills listed in the current National EMS Education Standards at their level of certification.

(11) Each EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD is individually responsible to complete and submit all required recertification material to the Department at one time, no later than 30 days and no earlier than one year prior to the individual's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(12) An EMS agency, designated or non-designated, or a Department approved entity that provides CME may compile and submit recertification materials on behalf of an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD; however, the individual EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD remains responsible for a timely and complete submission.

(13) The Department may shorten recertification periods. An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD whose recertification period is shortened must meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(14) The Department may not lengthen certification periods more than the four-year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expired. If this happens, the individual shall recertify in accordance with Utah Code 39-1-64.

R426-5-700. TB Test Requirements.

(1) All levels of certification and recertification except

EMD must submit a statement from a physician or other health care provider, confirming the applicant's negative results of a Tuberculin Skin Test or equivalent (TB test) examination conducted within the prior year, or complete the following requirements:

(a) if the test is positive, and there is no documented history of prior Latent TB Infection (LTBI) treatment, the applicant must see his primary care physician for a chest x-ray (CXR) in accordance with current Center for Disease Control and Prevention (CDC) guidelines and further evaluation; and

(b) Results of CXR and medical history must be submitted to the Bureau.

(2) If the CXR is negative, the applicant's medical history will be reviewed by the State EMS Medical Director. For individuals at high risk for developing active TB, treatment will be strongly recommended.

(3) If the CXR is positive, the applicant is considered to be suspect Active TB. Should the diagnosis be confirmed:

(a) Completion of treatment or release by an appropriate physician will be required prior to certification; and

(b) each such case will be reviewed by the State EMS Medical Director.

(4) In the event that an applicant who is required to get treatment refuses the treatment, BEMS may deny certification.

(5) A TB test should not be performed on a person who has a documented history of either a prior positive TB test or prior treatment for tuberculosis. The applicant must instead have a CXR in accordance with current CDC guidelines and provide documentation of negative CXR results to the department.

(6) If the applicant has had prior treatment for active TB or LTBI, the applicant must provide documentation of this treatment prior to certification. Documentation of this treatment will be maintained by the Bureau, and needs only to be provided once.

(7) Each such case will be reviewed by the State EMS Medical Director.

R426-5-800. Reciprocity.

(1) The Department may certify an individual as an EMR, EMT, AEMT, Paramedic, or EMD an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must:

(a) Submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Healthcare Provider CPR and ECC;

(d) submit TB test results as per R426-5-700;

(e) successfully complete the Department written and practical EMR, EMT, AEMT, Paramedic, or EMD examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year. EMDs must provide documentation of completion of 12 hours of CME within the prior year

(3) The Department may certify as an EMD an individual certified by the National Academy of Emergency Medical Dispatch (NAEMD) or equivalent. An individual seeking reciprocity for certification in Utah based on NAEMD or equivalent certification must:

(a) Submit documentation of current NAEMD or equivalent certification.

(b) maintain and submit documentation of having completed within the prior two years;

(i) a Department approved CPR course that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC; and

(ii) a minimum of a two-hour course in critical incident stress management (CISM).

(4) An individual who fails the written or practical EMR, EMT, or AEMT examination three times will be required to complete a Department approved EMR, EMT, or AEMT, course respective to the certification level sought.

(5) A candidate for paramedic reciprocity who fails the written or practical examinations three times can request further consideration of reciprocity after five years if the candidate has worked for an out of state EMS provider and can verify steady employment as a paramedic for at least three of the five years.

R426-5-900. Lapsed Certification.

(1) An individual whose EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification has expired for less than one year may, within one year after expiration, complete all recertification requirements, pay a late recertification fee, and successfully pass the written certification examination to become certified. The individual's new expiration date will be four years from the previous expiration date.

(2) An individual whose certification has expired for more than one year must:

(a) submit a letter of recommendation including results of an oral examination, from a certified off-line medical director, verifying proficiency in patient care skills at the certification level;

(b) successfully complete the applicable Department written and practical examinations;

(c) complete all recertification requirements; and

(d) the individual's new expiration date will be four years from the completion of all recertification materials.

(3) An individual whose certification has lapsed, is not authorized to provide care as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD until the individual completes the recertification process.

R426-5-1000. Transition to 2009 National EMS Education Standards.

(1) The Department adopts the 2009 National Education Standards as noted in this rule resulting in a need for specific dates for a transition period. These dates shall be as follows:

(a) EMT Basic to EMT January 1, 2012 to January 1, 2016; and

(b) EMT Intermediate to Advanced EMT, October 1, 2011 to September 30, 2013.

(2) Transition for EMT-B to EMT will be accomplished through the Department's written examination as part of the Individual's recertification process during the transition period.

(3) Transition for EMT-I and EMT-IA to AEMT will be accomplished through the Department's written AEMT transition examination during the transition period.

(4) Transition will not change the Individual's recertification date.

(5) During the transition period:

(a) EMT-I and EMT-IA will be deemed equivalent to AEMT certification, in accordance with the respective agency's

waivers; and

(b) EMT-B will be deemed equivalent to EMT certification.

(c) EMT-IA may maintain level of certification as long as employed by a licensed EMT-IA agency.

(6) After the deadline of September 31, 2013 of the AEMT transition period:

(a) an EMT-I who has not yet transitioned will be deemed an EMT and may only function as an EMT, and;

(b) an EMT-IA who is not working for a licensed EMT-IA agency must have transitioned to an AEMT or shall be deemed an EMT.

R426-5-1100. Emergency Medical Care During Clinical Training.

A student enrolled in a Department-approved training program may, under the direct supervision of the course coordinator, an instructor in the course, or a preceptor for the course, perform activities delineated within the training curriculum that otherwise require certification to perform.

R426-5-1200. Instructor Requirements.

(1) The Department may certify as an EMS Instructor an individual who:

(a) meets the initial certification requirements in R426-5-1300; and

(b) is currently certified in Utah as an EMR, EMT, AEMT,EMT-IA, Paramedic, or EMD.

(2) The Committee adopts the United States Department of Transportation's "EMS Instructor Training Program as the standard for EMS Instructor training and competency in the state, which is adopted and incorporated by reference.

(3) An EMS instructor may only teach up to the certification level to which the instructor is certified. An EMS instructor who is only certified as an EMD may only teach EMD courses.

(4) An EMS instructor must comply with the teaching standards and procedures in the EMS Instructor Manual.

(5) An EMS instructor must maintain the EMS certification for the level that the instructor is certified to teach. If an individual's EMS certification lapses, the instructor certification is invalid until EMS certification is renewed.

(6) The Department may waive a particular instructor certification requirement if the applicant can demonstrate that the applicant's training and experience requirements are equivalent or greater to what are required in Utah.

R426-5-1300. Instructor Certification.

(1) The Department may certify an individual who is an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD as an EMS Instructor for a two-year period.

(2) An individual who wishes to become certified as an EMS Instructor must:

(a) Submit an application and pay all applicable fees;

(b) submit three letters of recommendation regarding EMS skills and teaching abilities;

(c) submit documentation of 15 hours of teaching experience;

(d) successfully complete all required examinations; and

(e) successfully complete the Department-sponsored initial EMS instructor training course.

(3) An individual who wishes to become certified as an EMS Instructor to teach EMR, EMT, AEMT, or paramedic courses must also:

(a) Provide documentation of 30 hours of patient care within the prior year.

(4) The Department may waive portions of the initial EMS instructor training courses for previously completed Department-approved instructor programs.

R426-5-1400. Instructor Recertification.

(1) An EMS instructor who wishes to recertify as an instructor must:

(a) maintain current EMS certification; and

(b) attend the required Department-approved recertification training at least once in the two year recertification cycle;

(2) Submit an application and pay all applicable fees.

R426-5-1500. Instructor Lapsed Certification.

(1) An EMS instructor whose instructor certification has expired for less than two years may again become certified by completing the recertification requirements.

(2) An EMS instructor whose instructor certification has expired for more than two years must complete all initial instructor certification requirements and reapply as if there were no prior certification.

R426-5-1600. Training Officer Certification.

(1) The Department may certify an individual who is a certified EMS instructor as a training officer for a two-year period.

(2) An individual who wishes to become certified as an EMS Training officer must:

(a) Be currently certified as an EMS instructor;

(b) successfully complete the Department's course for new training officers;

(c) submit an application and pay all applicable fees; and

(d) submit biennially a completed and signed "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the then current Training Officer Manual.

(3) A training officer must maintain EMS instructor certification to retain training officer certification.

(4) An EMS training officer must abide by the terms of the Training Officer Contract, and comply with the standards and procedures in the Training Officer Manual as incorporated into the respective Training Officer Contract.

R426-5-1700. Training Officer Recertification.

(1) A training officer who wishes to recertify as a training officer must:

(a) Attend a training officer seminar at least once in the two year recertification cycle;

(b) maintain current EMS instructor and EMS certification;

(c) submit an application and pay all applicable fees;

(d) successfully complete any Department-examination requirements; and

(e) submit biennially a completed and signed new "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the current training officer manual.

R426-5-1800. Training Officer Lapsed Certification.

(1) An individual whose training officer certification has expired for less than two years may again become certified by completing the recertification requirements. The individual's new expiration date will be two years from the old expiration date.

(2) An individual whose training officer certification has expired for more than two year must complete all initial training officer certification requirements and reapply as if there were no prior certification.

R426-5-1900. Course Coordinator Certification.

(1) The Department may certify an individual as an EMS course coordinator for a two-year period.

(2) An individual who wishes to certify as a course

coordinator must:

(a) Be certified as an EMS instructor;

(b) be a co-coordinator of record for one Department-approved course with a certified course coordinator;

(c) submit a written evaluation and recommendation from the course coordinator in the co-coordinated course;

(d) complete certification requirements within one year of completion of the Department's course for new course coordinators;

(e) submit an application and pay all applicable fees;

(f) complete the Department's course for new course coordinators;

(g) sign and submit annually the "Course Coordinator Contract" to the Department agreeing to abide to the standards and procedures in the then current Course Coordinator Manual; and

(h) maintain EMS instructor certification.

(3) A Course Coordinator may only coordinate courses up to the certification level to which the course coordinator is certified. A course coordinator, who is only certified as an EMD, may only coordinate EMD courses.

(4) A course coordinator must abide by the terms of the "Course Coordinator Contract" and comply with the standards and procedures in the Course Coordinator Manual as incorporated into the "Course Coordinator Contract."

(5) A Course Coordinator must maintain an EMS Instructor certification and the EMS certification for the level that the course coordinator is certified to coordinate. If an individual's EMS certification lapses, the Course Coordinator certification is invalid until EMS certification is renewed.

R426-5-2000. Course Coordinator Recertification.

(1) A course coordinator who wishes to recertify as a course coordinator must:

(a) Maintain current EMS instructor and EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification;

(b) coordinate or co-coordinate at least one Department-approved course every two years;

(c) attend a course coordinator seminar at least once in the two year recertification cycle;

(d) submit an application and pay all applicable fees; and

(e) sign and submit biannually a Course Coordinator Contract to the Department agreeing to abide by the policies and procedures in the then current Course Coordinator Manual.

R426-5-2100. Course Coordinator Lapsed Certification.

(1) An individual whose course coordinator certification has expired for less than two year may again become certified by completing the recertification requirements. The individual's new expiration date will be two years from the recertification date.

(2) An individual whose course coordinator certification has expired for more than two year

must complete all initial course coordinator certification requirements and reapply as if there were no prior certification.

R426-5-2200. Course Approvals.

(1) A course coordinator offering EMS training to individuals who wish to become certified as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD must obtain Department approval prior to initiating an EMS training course. The Department shall approve a course if:

(a) The applicant submits the course application and fees no earlier than 90 days and no later than 30 days prior to commencing the course;

(b) the applicant has sufficient equipment available for the training or if the equipment is available for rental from the Department;

(c) the Department finds that the course meets all the Department rules and contracts governing training;

(d) the course coordinators and instructors hold current respective course coordinator and EMS instructor certifications; and

(e) the Department has the capacity to offer the applicable examinations in a timely manner after the conclusion of the course.

R426-5-2300. Paramedic Training Institutions Standards Compliance.

(1) A person must be authorized by the Department to provide training leading to the certification of a paramedic.

(2) To become authorized and maintain authorization to provide paramedic training, a person must:

(a) Enter into the Department's standard paramedic training contract; and

(b) adhere to the terms of the contract, including the requirement to provide training in compliance with the Course Coordinator Manual and the Utah Paramedic Training Program Accreditation Standards Manual.

R426-5-2400. Off-line Medical Director Requirements.

(1) The Department may certify an off-line medical director for a four-year period.

(2) An off-line medical director must be:

(a) a physician actively engaged in the provision of emergency medical care;

(b) familiar with the Utah EMS Systems Act, Title 26, Chapter 8a, and applicable state rules; and

(c) familiar with medical equipment and medications required.

R426-5-2500. Off-line Medical Director Certification.

(1) An individual who wishes to certify as an off-line medical director must:

(a) have completed an American College of Emergency Physicians or National Association of Emergency Medical Services Physicians medical director training course or the Department's medical director training course within twelve months of becoming a medical director;

(b) submit an application and;

(c) pay all applicable fees.

(2) An individual who wishes to recertify as an off-line medical director must:

(a) attend the medical directors annual workshop at least once every four years

(b) submit an application; and

(c) pay all applicable fees.

R426-5-2600. Refusal, Suspension, or Revocation of Certification.

(1) The Department shall exclude from EMS certification an individual who may pose an unacceptable risk to public health and safety, as indicated by his criminal history. The Department shall conduct a background check on each individual who seeks to certify or recertify as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD, including an FBI background investigation if the individual has resided outside of Utah within the past consecutive five years.

(2) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification from individuals convicted of any of the following crimes:

(a) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape;

(b) sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual

display, incest involving a child, assault on an elderly or infirm person;

(c) abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility; and

(d) crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnapping, robbery of any degree; or arson; or attempts to commit such crimes.

(3) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(a) Persons who are convicted of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole;

(b) conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(i) Crimes of violence against persons, such as assault;

(ii) crimes defined as domestic violence under Section 77-36-1;

(iii) crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act; and

(iv) crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) the Department may deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) the seriousness of the crime;

(ii) whether the crime relates directly to the skills of pre-hospital care service and the delivery of patient care;

(iii) the amount of time that has elapsed since the crime was committed;

(iv) whether the crime involved violence to or abuse of another person;

(v) whether the crime involved a minor or a person of diminished capacity as a victim;

(vi) whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust;

(vii) the total number of arrests and convictions; and

(viii) whether the applicant was truthful regarding the crime on his or her application.

(4) Certified EMS personnel must notify the Department of any arrest, charge, or conviction within seven days of the arrest, charge or conviction. If the person works for a licensed or designated EMS agency, the agency is also responsible to inform the Bureau of the arrest, charge or conviction.

(5) An official EMS agency representative verified by the supervisor of the agency may receive information pertaining to Department actions about an employee or a potential employee of the agency if a Criminal History Non-Disclosure Agreement is signed by the EMS agency representative.

(6) The Department may require EMS personnel to submit to a background examination or a drug test upon Department request.

(7) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification, or place a certification on probation, for any of the following causes:

(a) Any of the reasons for exclusion listed in Subsection (1);

(b) a violation of Subsection (2);

(c) a refusal to submit to a background examination pursuant to Subsection (3);

(d) habitual or excessive use or addiction to narcotics or dangerous drugs;

(e) refusal to submit to a drug test administered by the individual's EMS provider organization or the Department;

(f) habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an EMS personnel or while driving any Department-permitted vehicle;

(g) failure to comply with the training, certification, or recertification requirements for the certification;

(h) failure to comply with a contractual agreement as an EMS instructor, a training officer, or a course coordinator;

(i) fraud or deceit in applying for or obtaining a certification;

(j) fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as a certified individual;

(k) unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility;

(l) performing procedures or skills beyond the level of certification or agency licensure;

(m) violation of laws pertaining to medical practice, drugs, or controlled substances;

(n) conviction of a felony, misdemeanor, or a crime involving moral turpitude, excluding minor traffic violations chargeable as infractions;

(o) mental incompetence as determined by a court of competent jurisdiction;

(p) demonstrated inability and failure to perform adequate patient care;

(q) inability to provide emergency medical services with reasonable skill and safety because of illness, under the influence of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated; and

(r) misrepresentation of an individual's level of certification;

(s) failure to display a state-approved emblem with level of certification during an EMS response, and

(t) other or good cause, including conduct which is unethical, immoral, or dishonorable to the extent that the conduct reflects negatively on the EMS profession or might cause the public to lose confidence in the EMS system.

(8) The Department may suspend an individual for a felony, misdemeanor arrest, or charges pending the resolution of the charge if the nature of the charge is one that, if true, the Department could:

(a) Revoke the certification under subsection (1); and

(b) the Department may order EMS personnel not to practice when an active criminal or administrative investigation is being conducted.

R426-5-2700. Penalties.

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6 and/or suspension or revocation of certification(s).

KEY: emergency medical services
October 18, 2013 **26-8a-302**
Notice of Continuation April 26, 2012

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-6. Emergency Medical Services Per Capita and Competitive Grant Programs Rules.
R426-6-1. Authority and Purpose.

(1) This rule is established under Title 26 Chapter 8a.

(2) The purpose of this rule provides guidelines for the equitable distribution of per capita grant funds and competitive grant funds specified under the Emergency Medical Services (EMS) Grants Program.

R426-6-2. Per Capita and Competitive Grants Eligibility.

(1) Grants are available only to licensed EMS ambulance services, paramedic services, EMS designated first response units, and EMS dispatch providers that are either:

(a) Agencies or political subdivisions of local or state government or incorporated non-profit entities; or

(b) for-profit EMS providers that are the primary EMS provider for a service area.

(2) A for-profit EMS provider is a primary EMS provider in a geographical service area if it is licensed for and provides service at a higher level than the public or non-profit provider;

(a) The levels of EMS providers are in this rank order:

(i) Paramedic service;

(ii) EMT-IA;

(iii) Advanced EMT;

(iv) EMT;

(v) EMR;

(vi) EMD.

(b) Paramedic ambulance interfacility transports, EMT ambulance interfacility transports, or paramedic tactical rescue units are not eligible for grant funding because they cannot be the primary EMS provider for a geographical service area.

(3) Grants are available for use specifically related to the provision of emergency medical services. Grant funds cannot be used for rescue and fire equipment.

(4) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.

(5) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for per grant consideration.

R426-6-3. Per Capita and Competitive Grants Implementation.

(1) In accordance with Title 26, Chapter 8a, awards shall be implemented by grants between the Department and the grantee.

(2) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the Department and EMS Committee.

(3) The department may accept only complete applications which are submitted by the deadlines established by the Department and EMS Committee.

(4) Grant awards are effective on July 1 and must be used by June 30 of the following year. No extensions will be given.

(5) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

(6) No matching funds are required for per capita grants.

(7) Per capita funds may be used as matching funds for competitive grants.

R426-6-4. Per Capita Application and Award Formula.

(1) Per capita grants are available to eligible providers that complete a grant application by the deadline established annually by the Department.

(2) Agency applicants shall certify agency personnel rosters as part of the grant application process.

(a) A certified individual who works for both a public and a for-profit agency may be credited only to the public or non-profit licensee or designee.

(b) Certified individuals may be credited for only one agency. However, if a dispatcher is also an EMT, EMT-I, AEMT, EMT-IA, or paramedic, the dispatcher may be credited to one agency as a dispatcher and one agency as an EMT, EMT-I, AEMT, EMT-IA, or paramedic.

(c) Certified individuals who work for providers that cover multiple counties may be credited only for the county where the certified person lives.

(3) The Department shall allocate funds by using the following point totals for agency-certified personnel: certified Dispatchers = 1; certified EMRs = 1; certified EMTs = 2; certified Advanced EMTs = 3; certified Intermediate Advanced EMTs = 3; and certified Paramedics = 4. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated EMS dispatch agency, and designated EMS first response unit as a date as specified by the Department immediately prior to the grant year, which begins July 1. To comply with Legislative intent, the point totals of each eligible agency will be multiplied by the current county classification as provided under Section 17-50-501.

R426-6-5. Competitive Grant Process.

(1) It is the intent of the EMS Committee that there the local EMS council or committee review of EMS grant applications. Therefore, copies of competitive grant applications should be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for review and recommendation to the State Grants subcommittee.

(2) Agencies that are licensed or designated, whose EMS service area includes multiple local EMS Committee jurisdictions will be reviewed separately by the State Grants Subcommittee.

(3) The Grants Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

(4) Grant recipients shall provide matching funds in the amount specified in the Grant Program Guidelines.

(5) The Grants Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS issues.

(6) The Grants Subcommittee shall make recommendations based upon the following criteria:

(a) The impact on patient care;

(b) a description of the size and significant impediments of the geographic service area;

(c) the population demographics of the service area;

(d) the urgency of the need;

(e) call volume;

(f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;

(g) local county recommendation;

(h) a description of the agency; and

(i) percent of responses to non-residents of the service area.

R426-6-6. Interim or Emergency Grant Awards.

(1) The Grants Subcommittee may recommend interim or emergency grants if all the following are met:

(a) Grant funds are available;

(b) The applicant clearly demonstrates the need;

(c) the application was not rejected by the Grants Subcommittee during the current grant cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.

(2) Applicants for interim or emergency grants shall:

(a) Submit an interim/emergency grant application, following the same format as annual grant applications; and

(b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

KEY: emergency medical services
October 18, 2013 26-8a

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-7. Emergency Medical Services Prehospital Data System Rules.
R426-7-1. Authority and Purpose.

(1) This rule is established under Title 26 Chapter 8a.

(2) The purpose of this rule is to establish minimum mandatory EMS data reporting requirements.

R426-7-2. Prehospital Data Set.

(1) Emergency medical service providers shall collect data as identified by the Department in this rule.

(2) Emergency Medical Services Providers shall submit the data to the Department electronically in the National Emergency Medical Services Information System (NEMSIS) format. For Emergency Medical Services Providers directly using a reporting system provided by the Department, the data is considered submitted to the Department as soon as it has been entered or updated in the Department-provided system.

(3) Emergency Medical Services Providers shall submit NEMSIS Demographic data elements within 30 days after the end of each calendar quarter in the format defined in the NEMSIS EMSDemographicDataSet. Some data may change less frequently than quarterly, but Emergency Medical Services Providers shall submit all required data elements quarterly regardless of whether the data have changed.

(4) Emergency Medical Services Providers shall submit NEMSIS EMS incident data elements for each Patient Care Report within 30 days of the end of the month in which the EMS incident occurred, in the format defined in the NEMSIS EMSDataSet.

(5) If the Department determines that there are errors in the data, it may ask the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the supplier for corrections, the Emergency Medical Services Provider is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(6) The minimum required demographic data elements that must be reported under this rule include the following NEMSIS EMSDemographicDataSet elements:

D01_01 EMS Agency Number
D01_02 EMS Agency Name
D01_03 EMS Agency State
D01_04 EMS Agency County
D01_05 Primary Type of Service
D01_06 Other Types of Service
D01_07 Level of Service
D01_08 Organizational Type
D01_09 Organization Status
D01_10 Statistical Year
D01_11 Other Agencies In Area
D01_12 Total Service Size Area
D01_13 Total Service Area Population
D01_14 911 Call Volume per Year
D01_15 EMS Dispatch Volume per Year
D01_16 EMS Transport Volume per Year
D01_17 EMS Patient Contact Volume per Year
D01_18 EMS Billable Calls per Year
D01_19 EMS Agency Time Zone
D01_20 EMS Agency Daylight Savings Time Use
D01_21 National Provider Identifier
D02_01 Agency Contact Last Name
D02_02 Agency Contact Middle Name/Initial
D02_03 Agency Contact First Name
D02_04 Agency Contact Address
D02_05 Agency Contact City
D02_06 Agency Contact State
D02_07 Agency Contact Zip Code
D02_08 Agency Contact Telephone Number
D02_09 Agency Contact Fax Number
D02_10 Agency Contact Email Address
D02_11 Agency Contact Web Address
D03_01 Agency Medical Director Last Name
D03_02 Agency Medical Director Middle Name/Initial
D03_03 Agency Medical Director First Name
D03_04 Agency Medical Director Address
D03_05 Agency Medical Director City
D03_06 Agency Medical Director State
D03_07 Agency Medical Director Zip Code
D03_08 Agency Medical Director Telephone Number
D03_09 Agency Medical Director Fax Number
D03_10 Agency Medical Director's Medical Specialty
D03_11 Agency Medical Director Email Address
D04_01 State Certification Licensure Levels
D04_02 EMS Unit Call Sign
D04_04 Procedures
D04_05 Personnel Level Permitted to Use the Procedure
D04_06 Medications Given
D04_07 Personnel Level Permitted to Use the Medication
D04_08 Protocol
D04_09 Personnel Level Permitted to Use the Protocol
D04_10 Billing Status
D04_11 Hospitals Served
D04_13 Other Destinations
D04_15 Destination Type
D04_17 EMD Vendor
D05_01 Station Name
D05_02 Station Number
D05_03 Station Zone
D05_04 Station GPS
D05_05 Station Address
D05_06 Station City
D05_07 Station State
D05_08 Station Zip
D05_09 Station Telephone Number
D06_01 Unit/Vehicle Number
D06_03 Vehicle Type
D06_07 Vehicle Model Year
D07_02 State/Licensure ID Number
D07_03 Personnel's Employment Status
D08_01 EMS Personnel's Last Name
D08_03 EMS Personnel's First Name

(7) The minimum required Patient Care Report data elements that must be reported under this rule include the following NEMSIS EMSDataSet elements:

E01_01 Patient Care Report Number
E01_02 Software Creator
E01_03 Software Name
E01_04 Software Version
E02_01 EMS Agency Number
E02_02 Incident Number
E02_04 Type of Service Requested
E02_05 Primary Role of the Unit
E02_06 Type of Dispatch Delay
E02_07 Type of Response Delay
E02_08 Type of Scene Delay
E02_09 Type of Transport Delay
E02_10 Type of Turn-Around Delay
E02_12 EMS Unit Call Sign (Radio Number)
E02_20 Response Mode to Scene
E03_01 Complaint Reported by Dispatch
E03_02 EMD Performed
E04_01 Crew Member ID
E05_01 Incident or Onset Date/Time
E05_02 PSAP Call Date/Time
E05_03 Dispatch Notified Date/Time

E05_04 Unit Notified by Dispatch Date/Time
E05_05 Unit En Route Date/Time
E05_06 Unit Arrived on Scene Date/Time
E05_07 Arrived at Patient Date/Time
E05_08 Transfer of Patient Care Date/Time
E05_09 Unit Left Scene Date/Time
E05_10 Patient Arrived at Destination Date/Time
E05_11 Unit Back in Service Date/Time
E05_12 Unit Cancelled Date/Time
E05_13 Unit Back at Home Location Date/Time
E06_01 Last Name
E06_02 First Name
E06_03 Middle Initial/Name
E06_04 Patient's Home Address
E06_05 Patient's Home City
E06_06 Patient's Home County
E06_07 Patient's Home State
E06_08 Patient's Home Zip Code
E06_09 Patient's Home Country
E06_10 Social Security Number
E06_11 Gender
E06_12 Race
E06_13 Ethnicity
E06_14 Age
E06_15 Age Units
E06_16 Date of Birth
E06_17 Primary or Home Telephone Number
E07_01 Primary Method of Payment
E07_15 Work-Related
E07_16 Patient's Occupational Industry
E07_17 Patient's Occupation
E07_34 CMS Service Level
E07_35 Condition Code Number
E08_05 Number of Patients at Scene
E08_06 Mass Casualty Incident
E08_07 Incident Location Type
E08_11 Incident Address
E08_12 Incident City
E08_13 Incident County
E08_14 Incident State
E08_15 Incident ZIP Code
E09_01 Prior Aid
E09_02 Prior Aid Performed by
E09_03 Outcome of the Prior Aid
E09_04 Possible Injury
E09_05 Chief Complaint
E09_06 Duration of Chief Complaint
E09_07 Time Units of Duration of Chief Complaint
E09_11 Chief Complaint Anatomic Location
E09_12 Chief Complaint Organ System
E09_13 Primary Symptom
E09_14 Other Associated Symptoms
E09_15 Providers Primary Impression
E09_16 Provider's Secondary Impression
E10_01 Cause of Injury
E10_02 Intent of the Injury
E10_03 Mechanism of Injury
E10_04 Vehicular Injury Indicators
E10_05 Area of the Vehicle impacted by the collision
E10_06 Seat Row Location of Patient in Vehicle
E10_07 Position of Patient in the Seat of the Vehicle
E10_08 Use of Occupant Safety Equipment
E10_09 Airbag Deployment
E10_10 Height of Fall
E11_01 Cardiac Arrest
E11_02 Cardiac Arrest Etiology
E11_03 Resuscitation Attempted
E11_04 Arrest Witnessed by
E11_05 First Monitored Rhythm of the Patient
E11_06 Any Return of Spontaneous Circulation
E11_08 Estimated Time of Arrest Prior to EMS Arrival
E11_10 Reason CPR Discontinued
E12_01 Barriers to Patient Care
E12_08 Medication Allergies
E12_14 Current Medications
E12_18 Presence of Emergency Information Form
E12_19 Alcohol/Drug Use Indicators
E12_20 Pregnancy
E13_01 Run Report Narrative
E14_01 Date/Time Vital Signs Taken
E14_02 Obtained Prior to this Units EMS Care
E14_03 Cardiac Rhythm
E14_04 SBP (Systolic Blood Pressure)
E14_05 DBP (Diastolic Blood Pressure)
E14_07 Pulse Rate
E14_09 Pulse Oximetry
E14_10 Pulse Rhythm
E14_11 Respiratory Rate
E14_14 Blood Glucose Level
E14_15 Glasgow Coma Score-Eye
E14_16 Glasgow Coma Score-Verbal
E14_17 Glasgow Coma Score-Motor
E14_18 Glasgow Coma Score-Qualifier
E14_19 Total Glasgow Coma Score
E14_20 Temperature
E14_22 Level of Responsiveness
E14_24 Stroke Scale
E14_26 APGAR
E14_27 Revised Trauma Score
E14_28 Pediatric Trauma Score
E15_01 NHTSA Injury Matrix External/Skin
E15_02 NHTSA Injury Matrix Head
E15_03 NHTSA Injury Matrix Face
E15_04 NHTSA Injury Matrix Neck
E15_05 NHTSA Injury Matrix Thorax
E15_06 NHTSA Injury Matrix Abdomen
E15_07 NHTSA Injury Matrix Spine
E15_08 NHTSA Injury Matrix Upper Extremities
E15_09 NHTSA Injury Matrix Pelvis
E15_10 NHTSA Injury Matrix Lower Extremities
E15_11 NHTSA Injury Matrix Unspecified
E16_01 Estimated Body Weight
E16_02 Broselow/Luten Color
E16_03 Date/Time of Assessment
E16_04 Skin Assessment
E16_05 Head/Face Assessment
E16_06 Neck Assessment
E16_07 Chest/Lungs Assessment
E16_08 Heart Assessment
E16_09 Abdomen Left Upper Assessment
E16_10 Abdomen Left Lower Assessment
E16_11 Abdomen Right Upper Assessment
E16_12 Abdomen Right Lower Assessment
E16_13 GU Assessment
E16_14 Back Cervical Assessment
E16_15 Back Thoracic Assessment
16_16 Back Lumbar/Sacral Assessment
E16_17 Extremities-Right Upper Assessment
E16_18 Extremities-Right Lower Assessment
E16_19 Extremities-Left Upper Assessment
E16_20 Extremities-Left Lower Assessment
E16_21 Eyes-Left Assessment
E16_22 Eyes-Right Assessment
E16_23 Mental Status Assessment
E16_24 Neurological Assessment
E18_01 Date/Time Medication Administered
E18_02 Medication Administered Prior to this Units EMS Care

E18_03 Medication Given
E18_04 Medication Administered Route
E18_05 Medication Dosage
E18_06 Medication Dosage Units
E18_07 Response to Medication
E18_08 Medication Complication
E18_09 Medication Crew Member ID
E18_10 Medication Authorization
E19_01 Date/Time Procedure Performed Successfully
E19_03 Procedure
E19_04 Size of Procedure Equipment
E19_05 Number of Procedure Attempts
E19_06 Procedure Successful
E19_07 Procedure Complication
E19_08 Response to Procedure
E19_09 Procedure Crew Members ID
E19_10 Procedure Authorization
E19_12 Successful IV Site
E19_13 Tube Confirmation
E19_14 Destination Confirmation of Tube Placement
E20_01 Destination/Transferred To, Name
E20_03 Destination Street Address
E20_04 Destination City
E20_05 Destination State
E20_06 Destination County
E20_07 Destination Zip Code
E20_10 Incident/Patient Disposition
E20_14 Transport Mode from Scene
E20_15 Condition of Patient at Destination
E20_16 Reason for Choosing Destination
E20_17 Type of Destination
E22_01 Emergency Department Disposition
E22_02 Hospital Disposition
E23_03 Personal Protective Equipment Used
E23_09 Research Survey Field
E23_10 Who Generated this Report?
E23_11 Research Survey Field Title

(8) Emergency Medical Services Providers shall use elements E23_09 and E23_11 to report biosurveillance indicators. When any of the following indicators are present in an incident, the Emergency Medical Services Provider shall provide an instance of E23_09 and E23_11, with E23_09 set to "true" and E23_11 set to one of the following:

B01_01 Abdominal Pain
B01_02 Altered Level of Consciousness
B01_03 Apparent Death
B01_04 Bloody Diarrhea
B01_05 Fever
B01_06 Headache
B01_07 Inhalation
B01_08 Rash/Blistering
B01_09 Nausea/Vomiting
B01_10 Paralysis
B01_11 Respiratory Arrest
B01_12 Respiratory Distress
B01_13 Seizures

(9) Emergency Medical Services Providers are not required to submit other NEMSIS data elements but may optionally do so. Emergency Medical Services Providers may also use additional instances of E23_09 and E23_11 for their own purposes.

(10) For each patient transported to a licensed acute care facility or a specialty hospital with an emergency department, each responding emergency medical services provider unit that cared for the patient during the incident shall provide a report of patient status, containing information critical to the ongoing care of the patient, to the receiving facility within one hour after the patient arrives at the receiving facility in at least one of the following formats:

(a) NEMSIS XML; or
(b) Paper form.

(11) For each patient transported to a licensed acute care facility or a specialty hospital with an emergency department, the receiving facility shall provide at least the following information to each Emergency Medical Services Provider that cared for the patient, upon request by the Emergency Medical Services Provider:

(a) The patient's emergency department disposition; and
(b) the patient's hospital disposition.

R426-7-3. ED Data Set.

(1) All hospitals licensed in Utah shall provide patient data as identified by the Department.

(2) This data shall be submitted at least quarterly to the Department. Corporate submittal is preferred.

(3) The data must be submitted in an electronic format determined and approved by the Department.

(4) If the Department determines that there are errors in the data, it may return the data to the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the hospital for corrections, the hospital is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(5) The minimum required data elements include:

Unique Patient Control Number
Record Type
Provider Identifier (hospital)
Patient Social Security Number
Patient Control Number
Type of Bill
Patient Name
Patient's Address (postal zip code)
Patient Date of Birth
Patient's Gender
Admission Date
Admission Hour
Discharge Hour
Discharge Status
Disposition from Hospital
Patient's Medical Record Number
Revenue Code 1 ("001" sum of all charges)
Total Charges by Revenue Code 1 ("001" last total Charge Field, is sum)
Revenue Code 2 ("450" used for record selection)
Total Charges by Revenue Code 2 (Charges associated with code 450)
Primary Payer Identification
Estimated Amount Due
Secondary Payer Identification
Estimated Amount Due
Tertiary Payer Identification
Estimated Amount Due
Patient Estimated Amount Due
Principal Diagnosis Code
Secondary Diagnosis Code 1
Secondary Diagnosis Code 2
Secondary Diagnosis Code 3
Secondary Diagnosis Code 4
Secondary Diagnosis Code 5
Secondary Diagnosis Code 6
Secondary Diagnosis Code 7
Secondary Diagnosis Code 8
External Cause of Injury Code (E-Code)
Procedure Coding Method Used
Principal Procedure
Secondary Procedure 1
Secondary Procedure 2

Secondary Procedure 3
Secondary Procedure 4, and
Secondary Procedure 5

R426-7-4. Penalty for Violation of Rule.

As required by Section 63G-3-201(5): Any person or agency who violates any provision of this rule, per incident, may be assessed a penalty as provided in Section 26-23-6.

KEY: emergency medical services
October 18, 2013 28-8a
Notice of Continuation January 12, 2011

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-8. Emergency Medical Services Ambulance Rates and Charges.
R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ambulance services in the State of Utah.

R426-8-2. Ambulance Transportation Rates and Charges.

(1) Licensed services operating under R426-3 shall not charge more than the rates described in this rule. In addition, the net income of licensed services, including subsidies of any type, shall not exceed the net income limit set by this rule.

(a) The net income limit shall be the greater of eight percent of gross revenue or 14 percent return on average assets.

(b) Licensed Services may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(c) An agency may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on financial data as delineated by the department to be submitted as detailed under R426-8-2(9). This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport to care facility -

(a) Ground Ambulance - $615.00 per transport.

(b) Advanced EMT and EMT-IA Ground Ambulance - $813.00 per transport.

(c) Paramedic Ground Ambulance - $1,189.00 per transport.

(d) Ground Ambulance with Paramedic on-board - $1,189.00 per transport if:

(i) a dispatch agency dispatches a paramedic licensee to treat the individual;

(ii) the paramedic licensee has initiated advanced life support;

(iii) on-line medical control directs that a paramedic remain with the patient during transport; and

(iv) an ambulance service that interfaces with a paramedic rescue service and has an interlocal or equivalent agreement in place, dealing with reimbursing the paramedic agency for services provided up to a maximum of $253.71 per transport.

(4) Mileage Rate-

(a) $31.65 per mile or fraction thereof.

(b) In all cases mileage shall be computed from the point of pickup to the point of delivery.

(c) A fuel fluctuation surcharge of $0.25 per mile may be added when diesel fuel prices exceed $5.10 per gallon or gasoline exceeds $4.25 as invoiced.

(5) Surcharge-

(a) If the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of $1.50 per mile may be assessed.

(6) Special Provisions -

(a) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(i) Each patient will be assessed the transportation rate.

(ii) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(b) A round trip may be billed as two one-way trips.

(c) An ambulance shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge $22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge $22.05 per quarter hour or fraction thereof thereafter.

(7) Supplies and Medications -

(a) An ambulance licensee may charge for supplies and providing supplies, medications, and administering medications used on any response if:

(i) supplies shall be priced fairly and competitively with similar products in the local area;

(ii) the individual does not refuse services; and

(iii) the ambulance personnel assess or treats the individual.

(8) Uncontrollable Cost Escalation -

(a) In the event of a temporary escalation of costs, an ambulance service may petition the Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit.

(b) The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.

(9) Operating report -

(a) The licensed service shall file with the Department within 90 days of the end of each licensed service's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting.

(10) Fiscal audits -

(a) Upon receipt of licensed service fiscal reports, the Department shall review them for compliance to standards established.

(b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8a-504.

R426-8-3. Penalty for Violation of Rule.

As required by Subsection 63G-3-201(5): Any person that violates any provisions of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: emergency medical services
October 18, 2013 26-8a
Notice of Continuation January 5, 2011

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-9. Statewide Trauma System Standards.
R426-9-1. Authority and Purpose.

(1) Authority - This rule is established under Title 26, Chapter 8a, 252, Statewide Trauma System, which authorizes the Department to:

(a) establish and actively supervise a statewide trauma system;

(b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport, and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the trauma center designation requirements and verification process.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

R426-9-2. Trauma System Advisory Committee.

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures established by the Department and applicable statutes.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

R426-9-3. Trauma Center Categorization Guidelines.

The Department adopts as criteria for Level I, Level II, Level III, and Pediatric trauma center designation, compliance with national standards published in the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 2006. The Department adopts as criteria for Level IV and Level V trauma center designation the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 1999, except that a Level V trauma center need not have a general surgeon on the medical staff and may be staffed by nurse practitioners or certified physician assistants.

R426-9-4. Trauma Review.

(1) The Department shall evaluate trauma centers and applicants to verify compliance with standards set in R426-9-3. In conducting each evaluation, the Department shall consult with experts from the following disciplines:

(a) trauma surgery;

(b) emergency medicine;

(c) emergency or critical care nursing; and

(d) hospital administration.

(2) A consultant shall not assist the Department in evaluating a facility in which the consultant is employed, practices, or has any financial interest.

R426-9-5. Trauma Center Categorization Process.

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-9-3.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to state EMS agencies.

R426-9-6. Trauma Center Designation Process.

(1) Hospitals seeking voluntary designation and all designated Trauma Centers desiring to remain designated, shall apply for designation by submitting the following information to the Department at least 30 days prior to the date of the scheduled site visit:

(a) A completed and signed application and appropriate fees for trauma center verification;

(b) a letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) the data specified under R426-9-7 are current;

(d) Level I and Level II Trauma Centers must submit a copy of the Pre-review Questionnaire (PRQ) from the American College of Surgeons in lieu of the application in 1a above.

(e) Level III Level IV and Level V trauma centers must submit a complete Department approved application.

(2) Hospitals desiring to be designated as Level I and Level II Trauma Centers must be verified by the American College of Surgeons (ACS) within three (3) months of the expiration date of previous designation and must submit a copy of the full ACS report detailing the results of the ACS site visit. A Department representative must be present during the entire ACS verification visit. Hospitals desiring to be Level III, Level IV or Level v Trauma Centers must be designated by hosting a formal site visit by the Department.

(3) The Department and its consultants may conduct observation, review and monitoring activities with any designated trauma center to verify compliance with designation requirements.

(4) Trauma centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-9-6 or adjusted to coincide with the American College of Surgeons verification timetable.

(5) The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.

R426-9-7. Data Requirements for an Inclusive Trauma System.

(1) All hospitals shall collect, and monthly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. Designated trauma centers shall provide such data in an electronic format. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. The inclusion criteria for a

trauma patient are as follows:

(a) ICD9 Diagnostic Codes between 800 and 959.9 (trauma); and

(b) At least one of the following patient conditions: Admitted to the hospital for 24 hours or longer; transferred in or out of your hospital via EMS transport (including air ambulance); death resulting from the traumatic injury (independent of hospital admission or hospital transfer status; all air ambulance transports (including death in transport and patients flown in but not admitted to the hospital).

(c) Exclusion criteria are ICD9 Diagnostic Codes:

930-939.9 (foreign bodies)

905-909.9 (late effects of injury)

910-924.9 (superficial injuries, including blisters, contusions, abrasions, and insect bites)

The information shall be in a standardized electronic format specified by the Department which includes:

(i) Demographic Data:
Tracking Number
Hospital Number
Date of Birth
Age
Age Unit
Sex
Race
Other Race
Ethnicity
Medical Record Number
Social Security Number
Patient Home Zip Code
Patient's Home Country
Patient's Home State
Patient's Home County
Patient's Home City
Patient's Home Zip Code
Alternate Home Residence

(ii) Event Data:
Injury Time
Injury Date
Cause Code
Trauma Type
Work Related
Patient's Occupational Industry
Patient's Occupation
ICD-9/10 Primary E-Code
ICD-9/10 Location E-Code
Protective Devices
Child Specific Restraint
Airbag Deployment
Incident Country
Incident Location Zip Code
Incident State
Incident County
Incident City
Location Code
Injury Details

(iii) Referring Hospital:
Hospital Transfer
Transport Mode into Referring Hospital
Referring Hospital
Referring Hospital Arrival Time
Referring Hospital Arrival Date
Referring Hospital Discharge Time
Referring Hospital Discharge Date
Referring Hospital Admission Type
Referring Hospital Pulse
Referring Hospital Respiratory Rate
Referring Hospital Systolic Blood Pressure
Referring Hospital GCS -Eye
Referring Hospital GCS -Verbal
Referring Hospital GCS -Motor
Referring Hospital GCS Assessment Qualifiers
Referring Hospital GCS Total
Referring Hospital Procedures

(iv) Prehospital:
Transport Mode Into Hospital
Other Transport Mode
EMS Agency
EMS Origin
EMS Notify Time
EMS Notify Date
EMS Respond Time
EMS Respond Date
EMS Unit Arrival on Scene Time
EMS Unit Arrival on Scene Date
EMS Unit Scene Departure Time
EMS Unit Scene Departure Date
EMS Destination Arrival Time
EMS Destination Arrival Date
EMS Destination
EMS Trip Form Received
Initial Field Pulse Rate
Initial Field Respiratory Rate
Initial Field Systolic Blood Pressure
Initial Field Oxygen Saturation
Initial Field GCS-Eye
Initial Field GCS-Verbal
Initial Field GCS-Motor
Initial Field GCS Assessment Qualifiers
Initial Field GCS-Total

(v) Emergency Department/Hospital Information:
Admit Type
Admit Service
ED/Hospital Arrival Time
ED/Hospital Arrival Date
ED Admission Time
ED Admission Date
ED Discharge Time
ED Discharge Date
Inpatient Admission Time
Inpatient Admission Date
Hospital Discharge Time
Hospital Discharge Date
ED Discharge Disposition
ED Transferring EMS Agency
ED Discharge Destination Hospital
Transfer Reason
Hospital Discharge Disposition
Hospital Discharge Destination Hospital
DC Transferring EMS Agency
Outcome
Initial ED/Hospital Pulse Rate
Initial ED/Hospital Respiratory Rate
Initial ED/Hospital Respiratory Assistance
Initial ED/Hospital Systolic Blood Pressure
Initial ED/Hospital Temperature
Initial ED/Hospital Oxygen Saturation
Initial ED/Hospital Supplemental Oxygen
Initial ED/Hospital GCS-Eye
Initial ED/Hospital GCS-Verbal
Initial ED/Hospital GCS-Motor
Initial ED/Hospital GCS Assessment Qualifiers
Initial ED/Hospital GCS-Total
Alcohol Use Indicator
Drug Use Indicator
Inpatient Length of Stay
Total ICU Length of Stay
Total Ventilator Days

Primary Method of Payment
Hospital Complications
Initial ED/Hospital Height
Initial ED/Hospital Weight
Signs of Life
(vi) Hospital Procedures
ICD-9/10 Hospital Procedures
Hospital Procedure Start Time
Hospital Procedure Start Date
(vii) Diagnosis:
Co-Morbid Conditions
Injury Diagnosis Codes
(viii) Injury Severity Information
Abbreviated Injury Scale (AIS) Score
AIS Predot Code
ISS Body Region
AIS Version
Locally Calculated Injury Severity Score

R426-9-8. Trauma Triage and Transfer Guidelines.

The Department adopts by reference the 2009 Resources and Guidelines for the Triage and Transfer of Trauma Patients published by the Utah Department of Health as model guidelines for triage, transfer, and transport of trauma patients. The guidelines do not mandate the transfer of any patient contrary to the judgment of the attending physician. They are a resource for pre-hospital and hospital providers to assist in the triage, transfer and transport of trauma patients to designated trauma centers or acute care hospitals which are appropriate to adequately receive trauma patients.

R426-9-9. Noncompliance to Standards.

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation, if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-9-3.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

R426-9-10. Statutory Penalties.

As required by Section 63G-3-201(5): Any person or agency who violates any provision of this rule, per incident, may be assessed a penalty as provided in Section 26-23-6.

KEY: emergency medical services, trauma, reporting, trauma center designation
October 18, 2013 26-8a-252

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-100. Air Medical Service Rules.
R426-100-1. Authority and Purpose.

(1) This Rule is established under Chapter 8, Title 26a.

(2) The purpose of this Rule is to set forth air ambulance policies and rules and standards adopted by the Utah Emergency Medical Services Committee which promote and protect the health and safety of the people of this state.

R426-100-2. Requirements for Licensure.

(1) The Department may issue licenses and vehicle permits to air medical services conforming to R426-2 for Advanced Life Support Air Medical Service and for Specialized Life Support Air Medical Service. A Specialized Life Support Air Medical Service license must list, on the license, the specialties for which the Specialized Life Support Air Medical Service is licensed.

(2) A person may not furnish, operate, conduct, maintain, advertise, or provide air medical transport services to patients within the state or from within the state to out of state unless licensed by the Department.

(3) An air medical service shall comply with all state and federal requirements governing the specific vehicles utilized for air medical transport services.

(4) An air medical service must provide air medical services 24 hours a day, every day of the year as allowed by weather conditions except when the service is committed to another medical emergency or is unavailable due to maintenance requirements.

(5) To become licensed as an air medical service, an applicant must submit to the Department an application and appropriate fees for an original license which shall include the following:

(a) Certified Articles of Incorporation, if incorporated.

(b) The name, address, and business type of the owner of the air medical service or proposed air medical service.

(c) The name and address of the air ambulance operator(s) providing air ambulance(s) to the service.

(d) The name under which the applicant is doing business or proposes to do business.

(e) A statement summarizing the training and experience of the applicant in the air transportation and care of patients.

(f) A description and location of each dedicated and back-up air ambulance(s) procured for use in the air medical service, including the make, model, year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics.

(g) A copy of current Federal Aviation Administration (FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations.

(h) A copy of the current certificate of insurance for the air ambulance.

(i) A copy of the current certificate of insurance demonstrating coverage for medical malpractice.

(j) The geographical service area, location and description of the place or places from which the air ambulance will operate.

(k) Name of the training officer responsible for the air medical personnel continuing education.

(l) The name of the air medical service medical director.

(m) A proposed roster of medical personnel which includes level of certification or licensure.

(n) A statement detailing the level of care for which the air medical service wishes to be licensed, either advanced or specialized.

(6) Upon receipt of an appropriately completed application for an air medical service license and submission of license fees, the Department shall collect supporting documentation and review each application. After review and before issuing a license to a new air medical service, the Department shall directly inspect the vehicle(s), the air medical equipment, and required documentation.

(7) The Department shall issue an air medical service license and air ambulance permit for a period of four years from the date of issue and which shall remain valid for the period unless revoked or suspended by the Department. The department may conduct inspections to assure compliance.

(8) Upon change of ownership, an air medical service license and air ambulance permit terminates and the new owner or operator must file within ten business days of acquisition an application for renewal of the air medical service license and air ambulance permit.

(9) Air medical services must have an agreement to allow hospital emergency department physicians, nurses, and other personnel who participate in emergency medical services to fly on air ambulances.

(10) Air medical services must provide reports to the Department, for each mission made, on forms or a data format specified by the Department.

(11) Effective July 1, 1998, successful completion of the CAMTS certification process is required for licensure and relicensure by the Department as an air medical service.

(a) Air medical services licensed under R426-2 as of July 1, 1997 must achieve CAMTS certification as of July 1, 1998, and meet requirements of R426-2 for relicensure.

(b) Air medical services licensed under R426-2 after July 1, 1997 must submit an application for CAMTS certification within one year of receiving a license under this rule.

R426-100-3. Personnel Requirements.

(1) Emergency Medical Technicians and Paramedics, when responding to a medical emergency, shall display their certification patch or identification card on outer clothing to identify competency level at the scene.

(2) Air medical service providing basic life support must have at least one medical attendant who is an Emergency Medical Technician-Intermediate (EMT-I), EMT-Paramedic, Physician's Assistant, Registered Nurse, or MD.

(3) Air medical services providing advanced life support must have at least one medical attendant who is an EMT-P, PA, RN, or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, Respiratory Therapist, RN, or MD.

(4) Air medical services providing specialized life support must have at least one medical attendant who is a RN or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, RT, RN, or MD.

(5) All Basic, Advanced, and Specialized Life Support Medical Attendants must:

(a) Have a current CPR card or certificate meeting standards approved by the Department.

(b) Have verification in the air medical service file of initial and annual training in altitude physiology, safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications.

(c) Be knowledgeable in the application, operation, care, and removal of all medical equipment used in the care of the patient. The air medical personnel shall have a knowledge of potential in-flight complications, which may arise from the use of the medical equipment and it's in-flight capabilities and limitations.

(d) Have available during transport, a current copy of all written protocols authorized for use by the air medical service medical director. Patient care shall be governed by these authorized written protocols.

(6) Air medical services licensed for specialized life support shall meet the following requirements:

(a) Maintain clinical competency by keeping a current completion card in specialty education programs required by the air medical service job description (e.g., American Heart Association/American Academy of Pediatrics Neonatal Association or Pediatric Advanced Life Support pertinent to appropriate specialty).

(b) Attend continuing education for specialty care providers that is specific and appropriate to the mission statement and scope of care for air medical services.

(c) Annually demonstrate to the air medical service medical director a knowledge and competency of specialized care and treatment of patients.

(7) All air medical services shall have an air medical service medical director who is a physician licensed in the state in which the ground base is located for the air ambulance, knowledgeable and responsible for the air medical care of patients.

(8) The air medical service applicant shall provide in writing to the Department the name of the air medical service medical director. If the air medical service medical director is replaced or removed, the air medical service shall notify the Department within thirty days after the action.

(a) The air medical service medical director:

(i) Shall have initial and annual training in altitude physiology, air ambulance safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications. The air medical service shall document this training and make it available for inspection by the Department.

(ii) Shall have a current completion card in Advanced Cardiac Life Support according to the current standards of the American Heart Association.

(iii) Shall have a current completion card in Advanced Trauma Life Support according to the current standards of the American College of Surgeons.

(iv) Shall have a current specialty education completion card in Neonatal Resuscitation Program, Pediatric Advanced Life Support, and other similar courses or equivalent education in these areas.

(v) Shall have access to all specialty physicians as consultants.

(b) It is the responsibility of the air medical director to:

(i) Authorize written protocols for use by air medical attendants and review policies and procedures of the air medical service.

(ii) Develop and review treatment protocols, assess field performance, and critique at least 10% of the air medical service runs.

R426-100-4. Air Ambulance Vehicle Requirements.

(1) An air ambulance must have a permit from the Department to operate in Utah. Each air ambulance shall carry a decal showing the permit expiration date and permit number issued by the Department as evidence of compliance with R426-2. The permit holder shall meet all Federal Aviation Regulations specific to the operation of the air medical service.

(2) All air medical services shall notify the Department whenever the ground base location of a permitted vehicle is permanently changed.

(3) Air ambulances shall be maintained in good mechanical repair and sanitary condition on premises, properly equipped, maintained , and operated to provide quality service.

(4) Air ambulance requirements are as follows:

(a) The air ambulance must have sufficient space to accommodate at least one patient on a stretcher.

(b) The air ambulance must have sufficient space to accommodate at least two medical attendant seats.

(c) The patient stretcher shall be FAA-approved. It must be installed using the FAA 337 form or a "Supplemental Type Certificate." The stretcher shall be of sufficient length and width to support a patient in full supine position who is ranked as a 95th percentile American male that is 6 feet tall and weighing 212 pounds. The head of the stretcher shall be capable of being elevated at least 30 degrees.

(d) The air ambulance doors shall be large enough to allow a stretcher to be loaded without rotating it more than 30 degrees about the longitudinal roll axis, or 45 degrees about the lateral pitch axis.

(e) The stretcher shall be positioned so as to allow the medical attendants a clear view and access to any part of the patient's body that may require medical attention. Seat-belted medical attendants must have access to the patient's head and upper body.

(f) The patient, stretcher, attendants, seats, and equipment shall be so arranged as to not block the pilot, medical attendants, or patients from easily exiting the air ambulance.

(g) The air ambulance shall have FAA- approved two point safety belts and security restraints adequate to stabilize and secure any patient, patient stretcher, medical attendants, pilots, or other individuals.

(h) The air ambulance shall have a temperature and ventilation system for the patient treatment area.

(i) The patient area shall have overhead or dome lighting of at least 40-foot candle at the patient level, to allow adequate patient care. During night operations the pilot's cockpit shall be protected from light originating from the patient care area.

(j) The air ambulance shall have a self contained interior lighting system powered by a battery pack or portable light with a battery source.

(k) The pilots, flight controls, power levers, and radios shall be physically protected from any intended or accidental interference by patient, air medical personnel or equipment and supplies.

(l) The patient must be sufficiently isolated from the cockpit to minimize in-flight distractions and interference which would affect flight safety.

(m) The interior surfaces shall be of material easily cleaned, sanitized, and designed for patient safety. Protruding sharp edges and corners shall be padded.

(n) Patients whose medical problems may be adversely affected by changes in altitude may only be transported in a pressurized air ambulance.

(o) The air medical service shall provide all medical attendants with sound ear protectors sufficient to reduce excessive noise pollution arising from the air ambulance during flight.

(p) There shall be sufficient medical oxygen to assure adequate delivery of oxygen necessary to meet the patient medical needs and anticipated in-flight complications. The medical oxygen must:

(i) be installed according to FAA regulation;

(ii) have an oxygen flow rate determined by in-line pressure gauges mounted in the patient care area with each outlet clearly identified and within reach of a seat-belted medical attendant;

(iii) allow the oxygen flow to be stopped at or near the oxygen source from inside the air ambulance;

(iv) have gauges that easily identify the quantity of medical oxygen available;

(v) be capable of delivering fifteen liters/minute at fifty psi;

(vi) have a portable oxygen bottle available for use during patient transfer to and from the air ambulance;

(vii) have a fixed back-up source of medical oxygen in the event of an oxygen system failure;

(viii) the oxygen flow meters shall be recessed, padded, or by other means mounted to prevent injury to patients or medical attendants; and

(ix) "No smoking" signs shall be prominently displayed inside the air ambulance.

(q) The air ambulance electric power must be provided through a power source capable to operate the medical equipment and a back-up source of electric power capable of operating all electrically powered medical equipment for one hour.

(r) The air ambulance must have at least two positive locking devices for intravenous containers padded, recessed, or mounted to prevent injury to air ambulance occupants. The containers shall be within reach of a seat-belted medical attendant.

(s) The air ambulance must be fitted with a metal hard lock container, fastened by hard point restraints to the air ambulance, or must have a locking cargo bay for all controlled substances left in an unattended.

(t) An air ambulance shall have properly maintained survival gear appropriate to the service area and number of occupants.

(u) An air ambulance shall have an equipment configuration that is installed according to FAA criteria and in such a way that the air medical personnel can provide patient care.

(v) The air ambulance shall be configured in such a way that the air medical personnel have access to the patient in order to begin and maintain basic and advanced life support care.

(w) The air ambulance shall have space necessary to allow patient airway maintenance and to provide adequate ventilatory support from the secured, seat-belted position of the medical personnel.

R426-100-5. Equipment Standards.

(1) Air ambulances must maintain minimum quantities of supplies and equipment for each air medical transport as listed in the document R426 Appendix in accordance with the air medical service's licensure level. Due to weight and safety concerns on specialized air transports, the air medical service medical director shall insure that the appropriate equipment is carried according to the needs of the patient to be transported. All medications shall be stored according to manufacturer recommendations.

(2) All medical equipment except disposable items, shall be designed, constructed, and made of materials that under normal conditions and operations, are durable and capable of withstanding repeated cleaning.

(3) The equipment and medical supplies shall be maintained in working condition and within legal specifications.

(4) All non-disposable equipment shall be cleaned or sanitized after each air medical transport.

(5) Medical equipment shall be stored and readily accessible by air medical personnel.

(6) Before departing, the air medical personnel shall notify the pilot of any add-on equipment for weight and balance considerations.

(7) Physical or chemical restraints must be available and used for combative patients who could possibly hurt themselves or any other person in the air ambulance.

R426-100-6. Operational Standards.

(1) The pilot may refuse transport to any individual who the pilot considers to be a safety hazard to the air ambulance or any of its passengers.

(2) Records made for each trip on forms or data format specified by the Department, and a copy shall remain at the receiving facility for continuity of care.

(3) The air medical service must maintain a personnel file for personnel which shall include their qualifications and training.

(4) All air medical services must have an operational manual or policy and procedures manual available for all air medical personnel.

(5) All air medical service records shall be available for inspection by representatives of the Department.

(6)(a) All air ambulances shall be equipped to allow air medical service personnel to be able to:

(i) Communicate with hospital emergency medical departments, flight operations centers, air traffic control, emergency medical services, and law enforcement agencies.

(ii) Communicate with other air ambulances while in flight.

(b) The pilot must be able to override any radio or telephonic transmission in the event of an emergency.

(7) The management of the air medical service shall be familiar with the federal regulations related to air medical services.

(8) Each air medical service must have a safety committee, with a designated safety officer. The committee shall meet at least quarterly to review safety issues and submit a written report to the air medical service management and maintain a copy on file at the air medical service office.

(9) All air medical service shall have a quality management team and a program implemented by this team to assess and improve the quality and appropriateness of patient care provided by the air medical service.

R426-100-7. Statutory Penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23.

KEY: emergency medical services, air medical services
May 30, 2013 26-8

R590. Insurance, Administration.
R590-222. Life Settlements.
R590-222-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority provided in Subsection 31A-2-201(3), authorizing rules to implement the provisions of Title 31A, and Section 31A-36-119, authorizing rules to implement the provisions of Title 31A, Chapter 36.

R590-222-2. Purpose and Scope.

The purpose of this rule is to implement procedures for licensure of life settlement providers and producers, provider annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for life settlement payments, and procedures for requests for verification of coverage.

This rule applies to all life settlement providers and producers and to insurers whose policies are being settled.

R590-222-3. Incorporation by Reference.

The following appendices are hereby incorporated by reference within this rule and are available at www.insurance.utah.gov/legalresources/currentrules.html:

(1) Appendix A, Utah Life Settlement Provider Initial Application, dated 2009.

(2) Appendix B, Utah Life Settlement Provider Annual Report, dated 2009.

(3) Appendix C, NAIC Life Settlement brochure Selling Your Life Insurance Policy, dated 2004.

(4) Appendix D, NAIC Verification of Coverage for Life Insurance Policies, dated 2004.

(5) Appendix E, Utah Life Settlement Provider Renewal Application, dated 2013.

R590-222-4. Definitions.

In addition to the definitions in Section 31A-1-301 and 31A-36-102, the following definitions apply to this rule:

(1) For purposes of this rule, "insured" means the person covered under the policy being considered for settlement.

(2) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

R590-222-5. License Requirements.

(1) Life Settlement Provider License.

(a) A person may not perform, or advertise any service as a life settlement provider in Utah, without a valid license.

(b) A life settlement provider license shall be issued on an annual basis upon:

(i) the submission of a complete initial or renewal application; and

(ii) the payment of the applicable fees under Section 31A-3-103.

(c) An applicant for a license shall:

(i) use the application form prescribed by the commissioner and available on the department's website. For the initial application, see Appendix A and for the renewal application, see Appendix E;

(ii) with an initial application, provide a copy of the applicant's plan of operation that is to:

(A) describe the market the applicant intends to target;

(B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;

(C) estimate the applicant's projected Utah business over the next 5 years;

(D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that life settlement proceeds will be sent to the owner within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) with an initial application, provide the antifraud plan as required by Section 31A-36-117;

(iv) with both an initial and renewal application, provide any other information requested by the commissioner; and

(v) with both an initial and renewal application, provide evidence of financial responsibility in the amount of $250,000 in the form of a surety bond issued by an insurer authorized in this state. The surety bond shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the life settlement provider;

(A) The evidence of financial responsibility shall remain in force for as long as the licensee is active.

(B) The bond shall not be terminated or reduced without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a surety bond, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the life settlement provider is licensed as a life settlement provider as long as the benefits provided by the surety bond extend to this state.

(d) The commissioner may refuse to issue or renew a license of a life settlement provider if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If, within the time prescribed, a life settlement provider fails to pay the renewal fee, fails to submit the renewal application, or fails to submit the report required in Section R590-222-6, the nonpayment or failure to submit shall:

(i) result in lapse of the license; and

(ii) subject the provider to administrative penalties and forfeitures.

(f) If a life settlement provider has, at the time of license renewal, life settlements where the insured has not died, the life settlement provider shall:

(i) renew or maintain its current license status until the earlier of the following events:

(A) the date the life settlement provider properly assigns, sells, or otherwise transfers the life settlements where the insured has not died; or

(B) the date that the last insured covered by a life settlement transaction has died;

(ii) designate, in writing, either the life settlement provider that entered into the life settlement or the producer who received commission from the life settlement, if applicable, or any other life settlement provider or producer licensed in this state, to make all inquiries to the owner, or the owner's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident life settlement provider unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) Life Settlement Producer license.

Life settlement producers shall be licensed in accordance with Title 31A, Chapter 23a with a life insurance line of authority.

R590-222-6. Annual Report.

(1) By March 1 of each calendar year, each life settlement

provider licensed in this state shall submit a report to the commissioner. Such report shall be limited to all life settlement transactions where the owner is a resident of this state.

(2) This report shall be submitted in the format in Appendix B and contain the following information for the previous calendar year for each life settlement contracted during the reporting period:

(a) a coded identifier;

(b) policy issue date;

(c) date of the life settlement;

(d) net death benefit settled;

(e) amount available to the policyholder under the terms of the policy at the time of the settlement; and

(f) net amount paid to owner.

(3) The completed report is to be submitted by email to life.uid@utah.gov.

R590-222-7. Payment Requirements.

(1) Payment of the proceeds of a life settlement pursuant to Subsection 31A-36-110(3) shall be by means of wire transfer to an account designated by the owner or by certified check or cashier's check.

(2) Payment of the proceeds to the owner pursuant to a life settlement shall be made in a lump sum except where the life settlement provider has purchased an annuity or similar financial instrument issued by a licensed life insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds, not disclosed or described in the life settlement by the life settlement provider or escrow agent, is not permissible without written consent of the owner.

R590-222-8. Disclosures.

(1) As required by Subsection 31A-36-108(1), the disclosure, which is to be provided no later than the time of the application for the life settlement, shall be provided in a separate document that is signed by the owner and the life settlement provider or producer, and shall contain the following information:

(a) There are possible alternatives to a life settlement, including any accelerated death benefits, loans, or other benefits offered under the owner's life insurance policy.

(b) Some or all of the proceeds of the life settlement may be taxable under federal and state income taxes, and assistance should be sought from a professional tax advisor.

(c) Proceeds of the life settlement could be subject to the claims of creditors.

(d) Receipt of the proceeds of a life settlement may adversely affect the owner's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(e) The owner has the right to rescind a life settlement within 15 calendar days after the receipt of the life settlement proceeds by the owner as provided by Subsection 31A-36-109(7). If the insured dies during the rescission period, the settlement is deemed to have been rescinded. Rescission is subject to repayment of all life settlement proceeds and any premiums, loans and loan interest to the life settlement provider.

(f) Funds will be sent to the owner within three business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(g) Entering into a life settlement may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner. Assistance should be sought from a financial adviser.

(h) Disclosure to an owner shall include distribution of a copy of the National Association of Insurance Commissioners (NAIC) Life Settlement brochure, dated 2004, that describes the process of life settlements, see Appendix C.

(i) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a life settlement provider or producer about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement between the owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(j) Following execution of a life settlement, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a life settlement provider licensed in the state in which the owner resided at the time of the life settlement, or by the authorized representative of a duly licensed life settlement provider.

(2) A life settlement provider shall provide the owner with at least the following disclosures no later than the date the life settlement is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement or in a separate document signed by the owner and provide the following information:

(a) The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be settled.

(b) The document shall include the name, business address and telephone number of the life settlement provider.

(c) The amount and method of calculating the compensation paid or to be paid to the life settlement producer or any other person acting for the owner in connection with the transaction. The term "compensation" includes anything of value paid or given for the placement of a policy.

(d) If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, the owner shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with an insurance producer or the insurer issuing the policy for advice on the proposed life settlement.

(e) State the dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. If known, the life settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement.

(f) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

R590-222-9. Standards for Evaluation of Reasonable Payments.

The life settlement provider is responsible for assuring that the net proceeds from the life settlement exceed the benefits that are available at the time of the life settlement under the terms of

the policy including cash surrender, long-term care, and accelerated death benefits.

R590-222-10. Requests for Verification of Coverage.

(1) Insurers, authorized to do business in this state, whose policies are being settled, shall respond to a request for verification of coverage from a life settlement provider or producer within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyholder or certificate holder, accompanies the request;

(b) in the case of an individual policy, submission of a form substantially similar to the NAIC Verification of Coverage for Life Insurance Policies, dated 2004, which has been completed by the life settlement provider or producer in accordance with the instructions on the form, see Appendix D;

(c) in the case of group insurance coverage:

(i) submission of a form substantially similar to the NAIC Verification of Coverage for Life Insurance Policies dated 2004, which has been completed by the life settlement provider or producer in accordance with the instructions on the form, see Appendix D; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) An insurer whose policy is being settled may not charge a fee for responding to a request for information from a life settlement provider or producer in compliance with this rule in excess of any usual and customary charges to policyholders, certificate holders or insureds for similar services.

(3) The insurer whose policy is being settled shall send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificate holder and, where the policyholder or certificate holder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit or similar benefit that is available under a provision of or rider to the life insurance contract.

R590-222-11. Advertising.

(1) This section shall apply to advertising of life settlements, related products, or services intended for dissemination in this state. Failure to comply with any provision of this section is determined to be a violation of Section 31A-36-112.

(2) The form and content of an advertisement of a life settlement shall be sufficiently complete and clear so as to avoid misleading or deceiving the reader, viewer, or listener. It shall not contain false or misleading information, including information that is false or misleading because it is incomplete.

(3) Information required to be disclosed shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(4) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving owners, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence.

(5) An advertisement shall not use the name or title of an insurer or an insurance policy unless the affected insurer has approved the advertisement.

(6) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(7) The words "free," "no cost," "without cost," "no additional cost", "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(8) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the life settlement licensee makes, as its own, all the statements contained therein, and the statements are subject to all the provisions of this section.

(a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(b) An advertisement shall not state or imply that a life settlement benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(c) When an endorsement refers to benefits received under a life settlement, all pertinent information shall be retained for a period of five years after its use.

(9) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(10) An advertisement shall not disparage insurers, life settlement providers, life settlement producers, life settlement investment agents, anyone who may recommend a life settlement, insurance producers, policies, services or methods of marketing.

(11) The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement, products or services, and if any specific life settlement is advertised, the life settlement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name and administrative office address of the life settlement provider shall be shown on the application.

(12) An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement.

(13) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective owners

into believing that the solicitation is in some manner connected with a government program or agency.

(14) An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the life settlement provider or producer is licensed.

(15) An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlements are recommended or endorsed by any government entity.

(16) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(17) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

(a) any life settlement licensee or its business practices or methods of operations;

(b) the merits, desirability or advisability of any life settlement;

(c) any life settlement; or

(d) any life insurance policy or life insurance company.

(18) If the advertisement emphasizes the speed with which the settlement will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.

(19) If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a percent of face value obtained by owners contracting with the licensee during the past six months.

R590-222-12. Reporting of Fraud.

(1) A person engaged in the business of life settlements under Title 31A, Chapter 36, that knows or has reasonable cause to suspect that any person has violated or will violate any provision of Section 31A-36-113, shall, upon acquiring the knowledge, promptly notify the commissioner and provide the commissioner with a complete and accurate statement of all of the relevant facts and circumstances. Any other person acquiring such knowledge may furnish the information to the commissioner in the same manner. The report is a protected communication and when made without actual malice does not subject the person making the report to any liability whatsoever. The commissioner may suspend, revoke, or refuse to renew the license of any person who fails to comply with this section.

R590-222-13. Prohibited Practices.

(1) A life settlement provider or producer shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a life settlement provider or producer is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the owner and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

(2) A life settlement provider shall not also act as a life settlement producer in the same life settlement, whether entitled to collect a fee directly or indirectly.

(3) A life settlement producer shall not seek or obtain any compensation from the owner without the written agreement of the owner obtained prior to performing any services in connection with a life settlement.

(4) A life settlement provider or producer shall not unfairly discriminate in the making or soliciting of life settlements, or discriminate between owners with dependents and without dependents.

(5) A life settlement provider or producer shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the owner, or to any other person acting as an agent of the owner, other than a life settlement producer, with respect to the life settlement.

R590-222-14. Filing of Forms.

(1) All forms to be used for a life settlement shall be filed with the commissioner prior to use. The department is not required to review each form and does not provide approval for a filing. The forms will be identified as "filed for use" when submitted to the department with all requirements. The forms to be filed include the life settlement, disclosure to the owner, notice of intent to settle, verification of coverage, and application.

(2) A form filing consists of:

(a) a cover letter on the licensee's letterhead that provides the following:

(i) a list of the forms being filed by title and any identification number given the document;

(ii) a description of the filing; and

(iii) an indication whether the form:

(A) is new; or

(B) replacing or modifying a previously filed form; if so, describe the changes being made, the reason, and the date previously filed; and

(b) a copy of each form to be filed.

(3) The form filing and any responses must be submitted via email to life.uid@utah.gov.

(4) If a filing has been rejected, the filing must be resubmitted as a new filing.

(5) If a Filing Objection Letter has been issued, the response must include:

(a) a new cover letter identifying the changes made; and

(b) one copy of the revised form.

(6) Companies may request the status of their filing by email, telephone, or mail after 30 days from the date of submission.

R590-222-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 30 days from the rule's effective date.

R590-222-16. Penalties.

A person found, after an administrative proceeding, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-222-17. Severability.

If any provision or clause of this rule or its application to any person or situation is held to be invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, life settlement
September 23, 2013 31A-2-201
Notice of Continuation May 7, 2013 31A-36-119

R590. Insurance, Administration.
R590-226. Submission of Life Insurance Filings.
R590-226-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-226-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

(a) life insurance filings required by Section 31A-21-201; and

(b) report filings as required.

(2) This rule applies to:

(a) all types of individual and group life insurance, and variable life insurance; and

(b) group life insurance contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-226-3. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Data page" means the page or pages in a policy or certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as policy specifications, policy schedule, policy information, etc.

(3) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(4) "Electronic Filing" means a:

(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, or

(b) filing submitted via an email system.

(5) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(6) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy, for example, a war exclusion endorsement, a name change endorsement and a tax qualification endorsement.

(7) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(8) "Filer" means a person who submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a form;

(c) a document;

(d) an application;

(e) a report;

(f) a certificate;

(g) an endorsement;

(h) a rider;

(i) a life insurance illustration;

(j) a statement of policy cost and benefit information; and

(k) an actuarial memorandum, demonstration, and certification.

(10) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(11) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(13) "Letter of Authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the licensee by the department with the reasons for rejection; and

(c) not considered filed with the department.

(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit, for example, a waiver of premium rider, an accidental death benefit rider and a term insurance rider.

(18) "Type of insurance" means a specific life insurance product including, but not limited to, term, universal, variable, or whole life.

(19) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted.

R590-226-4. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department.

(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to Section R590-226-13 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-226-5. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) EXCEPTION: life settlement filers may choose to use email instead of SERFF to submit a filing.

(c) All filings must comply with the "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2012, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one licensee.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORANCE WITH UTAH ADMINISTRATIVE RULE R590-266 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) The "Utah Life Insurance Filing Certification for Individual" or the "Utah Life Insurance Filing Certification for Group" must be properly completed, signed, and attached to the Supporting Documentation tab.

(D) A filing will be rejected if the certification is false, missing, or incomplete.

(E) A false certification may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) has been submitted to the Interstate Insurance Product Regulation Commission (IIPRC);

(C) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected or withdrawn, the reasons for rejection or withdrawal, and the previous Utah Filed Date or the IIPRC approval date;

(D) includes documents for informational purposes; if so, provide the Utah Filed Date; or

(E) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, innovative, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(v) Explain any change in benefits or premiums that may occur while the contract is in force.

(vi) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vii) List the minimum death benefit.

(viii) Identify the intended market for filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:

(i) copy of domicile approval for the exact same filing; or

(ii) filing status information, which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(c) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Statement of Variability.

(i) A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation.

(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(iii) Variable data must be reasonable, appropriate and compliant.

(iv) Use of unauthorized variable data is prohibited.

(f) Life Insurance Illustration Materials. If the life insurance form is identified as illustrated, the filing must include a sample:

(i) basic illustration complete with data in John Doe fashion;

(ii) current illustration actuary's certification;

(iii) company officer certification; and

(iv) sample annual report.

(g) Statement of Policy Cost and Benefit Information. If the life insurance form is not illustrated, the filing must include a sample of the Statement of Policy Cost and Benefit Information.

(h) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule tab.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah laws are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) a description of the coverage in detail;

(B) a demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) Refer to each applicable section of this rule for additional procedures on how to submit forms and reports.

(6) A filer submitting a life settlement filing, in addition to the requirements contained in R590-222-14, shall:

(a) attach a letter of authorization from the licensee if the filer is not the licensee;

(b) submit the documents in PDF format;

(c) identify any provisions that are unusual, controversial, innovative, or have been previously objected to, or prohibited, and explain why the provision is included in the filing; and

(d) shall certify that the filing has been properly completed and is in compliance with Utah laws and rules.

R590-226-6. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must contain a descriptive title on the cover page.

(d) Forms must be in final printed form. Drafts may not be submitted.

(e) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age group, the form must be completed with data representative of senior insureds.

(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the basic illustration, the Statement of Policy Cost and Benefit information, and the application, as applicable.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Policy Filings.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, such as the application, sample data page, rider, endorsement, and actuarial memorandum.

(c) A policy data page must be included with every policy filing.

(d) Only one policy form for a single type of insurance may be filed, in each filing a life insurance policy with different premium payment periods is considered one form.

(e) A policy data page that changes the basic feature of the policy may not be filed without including the entire policy form in the filing.

(4) Rider or Endorsement Filing.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) A rider or endorsement that is based on morbidity risks, such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings."

(d) The filing must include:

(i) a listing of all base policy form numbers, title and Utah Filed Dates;

(ii) a description of how each filed rider or endorsement affects the base policy; and

(iii) a sample data page with data for the submitted form.

(e) Unrelated riders or endorsement may not be filed together.

R590-226-7. Additional Procedures for Individual Life Insurance Forms and Group Life Insurance Certificates Marketed Individually.

(1) Insurers filing life insurance forms are advised to review the following code parts and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-79, "Life Insurance Disclosure Rule;"

(d) R590-93, "Replacement of Life Insurance and Annuities;"

(e) R590-94, "Smoker/Nonsmoker Mortality Tables";

(f) R590-95, "Minimum Nonforfeiture Standards 1980 CSO and 1980 CET Mortality Tables;"

(g) R590-98, "Unfair Practice in Payment of Life Insurance and Annuity Policy Values;"

(h) R590-108, "Interest Rate During Grace Period or Upon Reinstatement of Policy;"

(i) R590-122, "Permissible Arbitration Provisions;"

(j) R590-177, "Life Insurance Illustrations;"

(k) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(l) R590-198, "Valuation of Life Insurance Policies;" and

(m) R590-223, "Rule to Recognize 2001 CSO Mortality Table."

(2) Every filing for an individual life insurance policy, rider or benefit endorsement, and a group life insurance policy that includes certificates that are marketed individually, shall include an actuarial memorandum, which includes a demonstration and certification of compliance with:

(a) Section 31A-22-408, "Standard Nonforfeiture Law for Life Insurance;" and

(b) Section 31A-17 Part V, "Standard Valuation Law."

R590-226-8. Additional Procedures for Group Market Filings.

(1) A filer submitting group life insurance filings are advised to review the following code parts and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) R590-79, "Life Insurance Disclosure Rule;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Statement of Policy Cost and Benefit Information. A statement of policy cost and benefit information must be included in non-term group life insurance and preneed funeral policies or prearrangements. This disclosure requirement shall extend to the issuance or delivery of certificates as well as to the master policy in compliance with R590-79-3.

(4) Actuarial Memorandum. An actuarial memorandum must be included in all group life insurance filings describing the coverage in detail and certifying compliance with applicable laws and rules. For non-term group life filings, the memorandum must also demonstrate nonforfeiture compliance with Section 31A-22-515.

(5) Eligible Group. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Section 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(6) Discretionary Group. If a group is not an eligible

group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a form filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items is considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-226-9. Additional Procedures for Variable Life Filings.

(1) Insurers submitting variable life filings are advised to review the following code section and rule prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;"

(b) R590-133, "Variable Contracts."

(2) A variable life insurance policy must have been previously approved or accepted by the licensee's state of domicile before it is submitted for filing in Utah.

(3) Information regarding the status of the filing of the variable life insurance policy with the Securities and Exchange Commission must be included in the filing.

(4) The description and the actuarial memorandum must:

(a) describe the types of accounts available in the policy; and

(b) identify those accounts that are separate accounts, including modified guaranteed accounts, and those that are general accounts.

(5) The actuarial memorandum must demonstrate nonforfeiture compliance:

(a) for separate accounts pursuant to Section 31A-22-411; and

(b) for fixed interest general accounts pursuant to Section 31A-22-408.

(c) In addition, for fixed accounts, the actuarial memorandum must:

(i) identify the guaranteed minimum interest rate; and

(ii) identify the maximum surrender charges.

(6) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

(7) A prospectus is not required to be filed.

R590-226-10. Additional Procedures for Combination Policies, Riders or Endorsements Providing Life and Accident and Health Benefits.

A filer submitting life and health combination policies, or health riders or endorsement to life policies, is advised to review Rule R590-220.

(1) A combination filing is a policy, rider, or endorsement which creates a product that provides both life and accident and health insurance benefits.

(a) The two types of acceptable combination filings are a rider or endorsement or an integrated policy.

(b) Combination filings take considerable time to process, and will be processed by both the Health Section and the Life Section of the Health and Life Insurance Division.

(2) A combination filing must be submitted separately to both the Health Section and the Life Section of the Health and Life Insurance Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For a rider or endorsement, the filing must be submitted to the appropriate section based on benefits provided in the rider or endorsement.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) whole policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

R590-226-11. Classification of Documents.

(1) In accordance with Section 63G-2-305, the only information the commissioner may classify as protected is:

(a) information deemed to be a trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or

(b) commercial information and non-individual financial information obtained from a person if:

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the commissioner to obtain necessary information in the future ; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(2) The person submitting the information under Subsection (1)(a) or (b) and claiming that such is or should be protected shall provide the commissioner with the information in Section 63G-2-309(1)(a)(i).

(a) The filer shall request which specific document the filer believes qualifies under Subsections 63G-2-305(1) or (2) when the filing is submitted; and

(b) the request shall include a written statement of reasons supporting the request that the information should be classified as protected.

(3) Once the filing has been received, the commissioner will review the documents the filer has requested to be classified as protected to determine if the request meets the requirements of Subsections 63G-2-305(1) or (2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected and the information will not be available to the public.

(b) If all the information in the document does not meet the requirements for being classified as protected, the commissioner will notify the filer of the denial, the reasons for the denial, and the filer's right to appeal the denial. The filer has 30 days to appeal the denial as allowed by Section 63G-2-401.

(c)(i) Despite the denial of classifying the information as protected, the commissioner shall treat the information as if it had been classified as protected until:

(A) the 30 day time limit for an appeal to the commissioner has expired; or

(B) the filer has exhausted all appeals available under Title

63G, Chapter 2, Part 4 and the document has been found to be a public document.

(ii) During the 30 day time limit to appeal or the appeal process, the filer may withdraw:

(A) the filing; or

(B) the request for designation as protected.

(d) If the filer combines in a document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

R590-226-12. Insurer Annual Reports.

All licensee annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted when requested.

R590-226-13. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers;

(d) Submission method, SERFF, or email; and

(e) SERFF tracking number.

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-226-14. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) include a final version of revised documents that incorporates all changes; and

(d) for filing submitted in SERFF, attach the documents in Subsections R590-226-13 (1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the order.

(b) Use of the filing must be discontinued no later than the date specified in the order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-226-15. Penalties.

Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-226-16. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-226-17. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule, which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: life insurance filings

October 16, 2013 31A-2-201

Notice of Continuation March 26, 2009 31A-2-201.1

31A-2-202

R590. Insurance, Administration.
R590-227. Submission of Annuity Filings.
R590-227-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-227-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting annuity filings under Section 31A-21-201.

(2) This rule applies to:

(a) all types of individual and group annuities, and variable annuities; and

(b) group annuity contracts issued to nonresident contract holders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-227-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Contract" means the annuity policy including attached endorsements and riders;

(3) "Data page" means the page or pages in a contract or certificate that provide the specific data for the annuitant detailing the coverage provided and may be titled by the insurer as contract specifications, contract schedule, policy information, etc.

(4) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(5) "Electronic Filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF.

(6) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(7) "Endorsement" means a written agreement attached to an annuity contract that alters a provision of the contract, for example, a name change endorsement and a tax qualification endorsement.

(8) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(9) "Filer" means a person who submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a contract;
(b) a form;
(c) a document;
(d) an application;
(e) a report;
(f) a certificate;
(g) an endorsement;
(h) a rider; and
(i) an actuarial memorandum, demonstration, and certification.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction to non-compliant items, may request clarification or additional information pertaining to the filing.

(12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(13) "Issue Ages" means the range of minimum and maximum ages for which a contract or certificate will be issued.

(14) "Letter of Authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(15) "Market type" means the type of contract that indicates the targeted market such as individual or group.

(16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(17) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the licensee by the department with the reasons for rejection; and

(c) not considered filed with the department.

(18) "Rider" means a written agreement attached to an annuity contract or certificate that adds a benefit, for example, a waiver of surrender charge, a guaranteed minimum withdrawal benefit and a guaranteed minimum income benefit.

(19) "Type of insurance" means a specific type of annuity including, but not limited to, equity indexed annuity, single premium immediate annuity, modified guaranteed annuity, deferred annuity, or variable annuity.

(20) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-227-4. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) A licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;
(b) must be submitted as a new filing; and
(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filings may be reviewed:
(i) when submitted;
(ii) as a result of a complaint;
(iii) during a regulatory examination or investigation; or
(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department.

(c) A new filing is required if a filing correction is made more than 15 days after the date original filing was submitted to department. The filer must reference the original filing in the filing description.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-227-12 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-227-5. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2012, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one licensee.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Certification.

A. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

B. The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORANCE WITH UTAH ADMINISTRATIVE RULE R590-266 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

C. The "Utah Life Insurance Filing Certification for Individual" or the "Utah Life Insurance Filing Certification for Group" must be properly completed, signed, and attached to the Supporting Documentation tab.

D. A filing will be rejected if the certification is false, missing, or incomplete.

E. A false certification may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) has been submitted with the Interstate Insurance Product Regulation Commission (IIPRC);

(C) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected or withdrawn, the reasons for rejection or withdrawal, and the previous Utah Filed Date or the IIPRC Date;

(D) includes documents for informational purposes; if so, provide the Utah Filed Date; or

(E) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(v) Explain any change in benefits or premiums that may occur while the contract is in force.

(vi) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vii) List the minimum initial premium.

(viii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:

(i) copy of domicile approval for the exact same filing; or

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(c) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Statement of Variability.

(i) A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation.

(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(iii) Variable data must be reasonable, appropriate and compliant.

(iv) Use of unauthorized variable data is prohibited.

(f) Annuity Report. All annuity filings must include a sample annuity annual report.

(g) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule tab.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah law are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) description of the coverage in detail;

(B) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) Refer to each applicable Section of this rule for additional procedures on how to submit forms and reports.

R590-227-6. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must contain a descriptive title on the cover page.

(d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

(e) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age market, the form must be completed with data representative of senior annuitants.

(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the application, and any marketing materials, as applicable.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Contract Filing.

(a) Each type of annuity must be filed separately.

(b) A contract filing consists of one contract form, including its related forms, such as an application, data page, rider or endorsement, and actuarial memorandum.

(c) A contract data page must be included with every contract filing.

(d) Only one contract form for a single type of insurance may be filed.

(e) A contract data page that changes the basic feature of the contract may not be filed without including the entire contract form in the filing.

(4) Rider or Endorsement Filings.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) A rider or endorsement that is based on morbidity risks such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings".

(d) The filing must include:

(i) a listing of all base contract form numbers, title and Utah Filed Dates; and

(ii) a description of how each filed rider or endorsement affects the base contract.

(iii) a sample data page with data for the submitted form.

(e) Unrelated endorsements may not be filed together.

R590-227-7. Additional Procedures for Fixed Annuity Filings.

(1) Insurers filing annuity forms are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-93, "Replacement of Life Insurance and Annuities;"

(d) R590-96, "Annuity Mortality Tables;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) Every filing of an individual annuity contract, rider or endorsement providing benefits, and every group annuity filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance with nonforfeiture and valuation laws. Refer to the following:

(a) Section 31A-22-409, "Standard Nonforfeiture Law for Deferred Annuities;" and

(b) Section 31A-17 Part V, "Standard Valuation Law."

(3) When submitting annuity filings the General Information Tab must:

(a) identify the specific subsection of the Utah nonforfeiture law, which applies to the submitted annuity;

(b) describe the basic features of the form submitted;

(c) identify and describe the interest earning features; including the guaranteed interest rate, the guaranteed interest terms, and any market value adjustment feature;

(d) describe the guaranteed and nonguaranteed values including any bonuses;

(e) describe all charges, fees and loads;

(f) list and describe all accounts, options and strategies, if any;

(g) identify whether the accounts are fixed interest general accounts, registered separate accounts including modified guaranteed separate accounts; and

(h) describe any restrictions or limitations regarding withdrawals, surrenders, and the maturity date or settlement options.

(4) The contract must be complete with a sample specification page attached.

(5) The actuarial memorandum must:

(a) be currently dated and signed by the actuary;

(b) identify the specific subsections of the Utah nonforfeiture law which applies to the submitted annuity;

(c) describe all contract provisions in detail, including all guaranteed and non-guaranteed elements, that may affect the values;

(d) identify the guaranteed minimum interest crediting rates;

(e) describe in detail the particular methods of crediting interest, including:

(i) guaranteed fixed interest rates; and

(ii) guaranteed interest terms.

(f) specifically identify, describe and list all charges and fees, including loads, surrender charges, market value adjustments or any other adjustment feature;

(g) describe in detail all accounts and factors that are used to calculate guaranteed minimum nonforfeiture values and minimum cash surrender values in the contract and the elements used in the calculation of the minimum values required by the law; and

(h) include the formulas used to calculate the minimum guaranteed values provided by the contract and the formulas used to calculate the minimum guaranteed values required by the applicable subsections of the nonforfeiture law.

(6) The actuarial demonstration must:

(a) compare minimum contract values with minimum nonforfeiture values;

(b) be based on representative premium patterns, for flexible premium products use both a single premium and level premium payment, and for both age 35 and age 60 or the highest issue age if lower;

(c) numerically demonstrate that the values based on the guaranteed minimum interest rates, the maximum surrender charges, fees, loads, and any other factors affecting values, provide values that are in compliance with the Standard Nonforfeiture Law using both the retrospective and the prospective tests, each test must be clearly identified, and include the following:

(i) For the retrospective test, describe the net consideration and the interest rates used in the accumulation. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(ii) For the prospective test, identify the maturity value and the interest rate used for each respective year to determine the present value. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(7) The actuarial certification of compliance must be currently dated and signed by the actuary. The certification must state that the formulas used and values provided are in compliance with Utah laws and rules.

R590-227-8. Additional Procedures for Group Annuity Filings.

(1) A filer submitting group annuity filings are advised to

review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;" and

(d) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A group contract must be included with each certificate filing along with the master application and enrollment form.

(3) Actuarial Memorandum. An actuarial memorandum must be included in all group annuity filing describing the features of the contract and certifying compliance with applicable laws and rules.

(4) Eligible Groups. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Sections 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(5) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items is considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as; change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-227-9. Additional Procedures for Variable Annuity Filings Procedures.

(1) Insurers submitting variable annuity filings are advised to review the following code sections and rule prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;" and

(b) R590-133, "Variable Contracts."

(2) A variable annuity contract must have been previously approved or accepted by the licensee's state of domicile before it is submitted for filing in Utah.

(3) Information regarding the status of the filing of the variable annuity with the Securities and Exchange Commission must be included in the filing.

(4) The description and the actuarial memorandum must:

(a) describe the type of accounts available in the contract; and

(b) identify those accounts that are separate accounts, including modified guaranteed annuities, and those accounts that are general accounts.

(5) The actuarial memorandum must describe all contract provisions in detail, including all guaranteed and non-guaranteed elements that may affect the values.

(6) The actuarial demonstration must numerically demonstrate compliance with the applicable nonforfeiture laws:

(a) for variable annuities, including modified guaranteed annuities, pursuant to Section 31A-22-411;

(b) for fixed interest general accounts pursuant to 31A-22-409, identify and describe all guaranteed factors that affect values, including:

(i) the guaranteed minimum interest rate; and

(ii) the maximum surrender charges and loads.

(7) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

(8) A filing for a rider that provides benefits, such as guaranteed minimum death benefit and guaranteed minimum withdrawal benefit, must include an actuarial memorandum.

(9) A prospectus is not required to be filed.

R590-226-10. Classification of Documents.

(1) In accordance with Section 63G-2-305, the only information the commissioner may classify as protected is:

(a) information deemed to be a trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or

(b) commercial information and non-individual financial information obtained from a person if:

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the commissioner to obtain necessary information in the future ; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(2) The person submitting the information under Subsection (1)(a) or (b) and claiming that such is or should be protected shall provide the commissioner with the information in Section 63G-2-309(1)(a)(i).

(a) The filer shall request which specific document the filer believes qualifies under Subsections 63G-2-305(1) or (2) when the filing is submitted; and

(b) the request shall include a written statement of reasons supporting the request that the information should be classified as protected.

(3) Once the filing has been received, the commissioner will review the documents the filer has requested to be classified as protected to determine if the request meets the requirements of Subsections 63G-2-305(1) or (2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected and the information will not be available to the public.

(b) If all the information in the document does not meet the requirements for being classified as protected, the commissioner will notify the filer of the denial, the reasons for the denial, and the filer's right to appeal the denial. The filer has 30 days to appeal the denial as allowed by Section 63G-2-401.

(c)(i) Despite the denial of classifying the information as protected, the commissioner shall treat the information as if it had been classified as protected until:

(A) the 30 day time limit for an appeal to the commissioner has expired; or

(B) the filer has exhausted all appeals available under Title

63G, Chapter 2, Part 4 and the document has been found to be a public document.

(ii) During the 30 day time limit to appeal or the appeal process, the filer may withdraw:

(A) the filing; or

(B) the request for designation as protected.

(d) If the filer combines in a document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

R590-227-11. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) SERFF tracking number

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-227-12. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporate all changes; and

(d) for filing submitted in SERFF, attached the documents in Subsections R590-227-11(1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued no later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-227-13. Penalties.

Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-227-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-227-15. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: annuity insurance filings
October 16, 2013 **31A-2-201**
Notice of Continuation March 26, 2009 **31A-2-201.1**
31A-2-202

R708. Public Safety, Driver License.
R708-10. Driver License Restrictions.
R708-10-1. Authority.

This rule is authorized by Sections 53-3-104(1)(a) and 53-3-208.

R708-10-2. Purpose.

The purpose of this rule is to identify and define restriction codes that apply to a Utah driving privilege.

R708-10-3. Definitions.

(1) "Restriction Code" means a designation on a person's Utah driving certificate or Utah driving record that indicates a specific driving restriction identified by the Utah Driver License Division required for a person to safely operate a motor vehicle.

R708-10-4. Restriction Code.

(1) "A" indicates no restrictions are required for the driver while they are operating a motor vehicle.

(2) "B" indicates the driver is restricted to wearing corrective lenses while operating a motor vehicle.

(3) "C" indicates a mechanical aid or compensatory device must be installed in the motor vehicle the driver is operating.

(4) "D" indicates the driver must use a prosthetic aid while operating a vehicle.

(5) "F" indicates the driver is restricted to driving a motor vehicle with outside rearview mirrors.

(6) "G" indicates the driver is restricted to driving during daylight hours only.

(7) "J" is used as a free text field to identify additional restrictions for the driver.

(8) "K" indicates the driver is restricted to intrastate only while driving commercially.

(9) "U" indicates the driver is restricted to operating only three-wheel motorcycles.

(10) "1" indicates the driver is required to have an ignition interlock device installed in the motor vehicle they are operating.

(11) "2" indicates the driver is restricted to operating a motorcycle with 249cc or less.

(12) "3" indicates the driver is restricted to operating a motorcycle with 649cc or less.

(13) "4" indicates the driver is restricted to operating a street legal ATV.

(14) "5" indicates the driver is restricted to operating a motorcycle with 90cc or less.

(15) "6" indicates the driver is restricted to operating a motor vehicle on a road with a posted speed limit of 40 mph or less.

(16) "7" indicates the driver is restricted to operating a motor vehicle with an automatic transmission.

KEY: driver license restrictions, licensing
October 22, 2013 53-3-104(1)(a) et seq.
Notice of Continuation April 7, 2009 53-3-208

R708. Public Safety, Driver License.
R708-49. Temporary Identification Card.
R708-49-1. Purpose.

The purpose of the rule is to set forth the provisions for the issuance of a temporary regular identification card.

R708-49-2. Authority.

This rule is authorized by Subsection 53-3-104(1)(b).

R708-49-3. Definitions.

(1) "Temporary Regular Identification card" means a temporary identification card issued by the Driver License Division to a qualified U.S. Citizen, Legal Permanent Resident Alien or U. S. National who has not provided all the required documents to obtain a completed identification card.

R708-49-4. Provisions.

(1) An applicant for an identification card as defined in Section 53-3-102(17) who is unable to provide all required documentary evidence under Subsection 53-3-804(2)(a), 53-3-804(2)(b), 53-3-804(2)(c), 53-3-804(2)(d) and 53-3-804(2)(i)(i) at the time of application may be issued a temporary identification card if the applicant:

(a) pays the required application fee;

(b) is a U.S. Citizen, Legal Permanent Resident Alien or U.S. National; and

(c) has on file with the division a previous license or identification record that includes a digitized photo.

(2) The temporary identification card shall be a paper document and shall contain security features as determined by the division.

(3) The temporary identification card shall bear the applicant's digitized photo image and signature.

(4) The temporary identification card shall expire six months from the date of issue.

KEY: temporary identification card
June 30, 2013 53-3-805

R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-1. General Provisions.

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- When residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. In this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the Commission. Except as provided in R746-200-7(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

R746-200-2. General Definitions.

A. "Account Holder" -- A person, corporation, partnership, or other entity which has agreed with a public utility to pay for receipt of residential utility service and to which the utility provides service.

B. "Applicant" -- As used in these rules means a person, corporation, partnership, or other entity which applies to a public utility for residential utility service.

C. "Budget Billing" -- Monthly residential payment plan under which the customer's estimated annual billing is divided into 12 monthly payments.

D. "Deferred Payment Agreement" -- As used in these rules means an agreement to receive, or to continue to receive, residential utility service pursuant to Section R746-200-5 and to pay an outstanding debt or delinquent account owed to a public utility.

E. "Residential Utility Service" -- Means gas, water, sewer, and electric service provided by a public utility to a residence.

F. "Termination of Service" -- The terms "termination," "disconnection," and "shutoff" as used in these rules are synonymous and mean the stopping of service for whatever cause.

G. "Load Limiter" -- Device which automatically interrupts electric service at a residence when the preset kW demand is exceeded. Service is restored when the customer decreases usage and then presses the reset button on the device.

R746-200-3. Deposits, Eligibility for Service, and Shared Meter or Appliance.

A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. For electric cooperatives and electric service districts, interest rates shall be determined by the governing board of directors of the cooperative or district and filed with the Commission and shall be deemed approved by the Commission unless ten percent or more of the customers file a request for agency action requesting an investigation and hearing. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid when the deposit is required.

B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-7(C)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

C. Shared Meter or Appliance - In rental property where

one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the utility, the utility will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly and he has knowledge of the account responsibility.

R746-200-4. Account Billing.

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months. This section applies to permanent continuous service customers, not to seasonal customers.

B. Estimated Billing --

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and give a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-7(C)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";

3. the amount of payments made to the account during the current billing cycle using a term such as "payments";

4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";

5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";

6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";

7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;

8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

D. Late Charge --

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

F. Disputed Bill --

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-8, Informal Review, and R746-200-9, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

G. Unpaid Bills - Utilities transferring unpaid bills from inactive or past accounts to active or current accounts shall follow these limitations:

1. A utility company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.

2. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.

3. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

4. The customer may dispute the transferred amount pursuant to R746-200-4(F).

R746-200-5. Deferred Payment Agreement.

A. Deferred Payment Agreement --

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B) unless the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service. If the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service, the use of a deferred payment agreement is at the utility's discretion.

2. An applicant or account holder shall have the right to a deferred payment agreement, consisting of 12 months of equal monthly payments, if the full amount of the delinquent balance plus interest shall be paid within the 12 months and if the applicant or account holder agrees to pay the initial monthly installment. The account holder shall have the right to pre-pay a monthly installment, pre-pay a portion of, or the total amount of the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current

month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

3. Payment Options

a. If a utility has a budget billing or equal payment plan available, it shall offer the account holder the option of:

i. agreeing to pay monthly bills for future residential utility service as they become due, plus the monthly deferred payment installment, or

ii. agreeing to pay a budget billing or equal payment plan amount set by the utility for future residential utility service plus the monthly deferred payment installment.

b. When negotiating a deferred payment agreement with a utility that does not offer a budget billing or equal payment plan, the account holder shall agree to pay the monthly bills for future residential utility service plus the monthly deferred payment installment necessary to liquidate the delinquent bill.

4. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

5. A deferred payment agreement may include a finance charge as approved by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's discretion.

R746-200-6. Reconnection of Discontinued Service.

A. Public utilities shall have personnel available 24 hours each day to reconnect utility service. Service shall be reconnected as soon as possible, but no later than the next generally recognized business day after the customer has requested reconnection and complied with all necessary conditions for reconnection of service; which may include payment of reconnection charges and compliance with deferred payment agreement terms.

B. If a customer requests reconnection or other services outside of the utility's normal business days or hours of operation, the utility shall inform the customer of any additional charges or terms, as specified in the utility's tariff provisions, applicable to the customer's request.

R746-200-7. Termination of Service.

A. Definitions. As used in this section (R746-200-7):

1. "Licensed medical provider" means a medical provider:

a. who holds a current and active medical license under Utah Code Title 58; and

b. whose scope of practice authorizes the medical provider to diagnose the condition described by the medical provider under this rule,

2. "Life-supporting equipment" means life-supporting medical equipment:

a. with normal operation that requires continuation of public utility service; and

b. used by an individual who would require immediate assistance from medical personnel to sustain life if the life supporting equipment ceased normal operations.

3. "Life-supporting equipment statement" means a written statement:

a. signed by the licensed medical provider for the account holder or resident who utilizes life-supporting equipment; and

b. including:

i. a description of the medical need of the account holder or resident who utilizes life-supporting equipment;

ii. the account holder's name and address;

iii. name of resident using life-supporting equipment and relationship to account holder, if different than account holder;

iv. the health infirmity and expected duration;

v. identification of the life-support equipment that requires the utility's service;

vi. a determination by the licensed medical provider that immediate assistance from medical personnel to sustain life would be required if the life supporting equipment ceased normal operations; and

vii. the name and contact information of the licensed medical provider for the resident who utilizes life-supporting equipment,

4. "Serious illness or infirmity statement" means a written statement:

a. signed by a licensed medical provider;

b. written on:

i. a form obtained from the public utility; or

ii. the licensed medical provider's letterhead stationary;

c. legibly describing:

i. a diagnosed medical condition under which termination of utility service will injure the person's health or aggravate the person's illness; and

ii. the anticipated duration of the diagnosed medical condition.

B. Delinquent Account --

1. A residential utility service bill which has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if he has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

C. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information; or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-

200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than $25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

D. Restrictions upon Termination of Service -- Medical Reasons --

1. Serious Illness or Infirmity. If a public utility receives a serious illness or infirmity statement :

a. the public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;

b. the Commission may, upon receipt of a written petition from the account holder of the residence, or the person whose health would be threatened or illness aggravated by termination of utility service, grant an extension that normally will not exceed one additional month; and

c. the account holder is liable for the cost of residential utility service during the period of continued service.

2. Life-Supporting Equipment.

a. After receiving a life-supporting equipment statement, the public utility:

i. shall mark and identify applicable meter boxes where the life-supporting equipment is used;

ii. may not terminate service to the residence unless the public utility has obtained prior approval from the Commission; and

iii. may request annual verification from the licensed medical provider of the life-supporting equipment.

b. A public utility may petition the Commission for authorization to terminate service on an account where the public utility has received a life-supporting equipment statement and the related medical provider verification:

i. if the account is in default;

ii. if the utility has:

AA. followed R746-200-5 on offering a deferred payment agreement; or

BB. if R746-200-5 does not apply, allowed the customer one month to enter into a deferred payment agreement that may last up to 12 months; and

iii. by filing its petition with the Commission and providing a copy to the Division.

c. A petition for authorization to terminate service shall contain:

i. the public utility's written request to the Commission to terminate service;

ii. the life-supporting equipment statement;

iii. the information provided to the public utility by the licensed medical provider;

iv. a copy of a letter sent to the account holder and, if appropriate, to a third party, notifying the account holder of the account holder's right to file a protest with the Commission within 10 days; and

v. an affidavit verifying the public utility provided the account holder and, if appropriate, a third party, the information required by this rule.

d. Within two business days after receiving a petition for authorization to terminate service, the Division shall:

i. notify the account holder by regular and certified mail that the utility is requesting authorization from the Commission to terminate service; and

ii. instruct the account holder to contact the utility for further information.

e. After receiving a petition for authorization to terminate service, the Commission may:

i. schedule an expedited hearing if a protest is received within 10 days; or

ii. issue an order authorizing termination of service if the requirements of this rule have been satisfied.

f. If a public utility receives authorization to terminate service, the public utility shall provide a 48 hour notice of termination to the customer consistent with R746-200-7.G.2.

g. The account holder is liable for the cost of residential utility service during the period of service, including throughout all proceedings related to life-supporting equipment.

E. Payments from the Home Energy Assistance Target (HEAT) Program -- Suppliers may not discontinue utility service to a low-income household for at least 30 days after receiving utility payment or verification of utility payment from the HEAT Program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination of service for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;

f. the date on which payment arrangements must be made to avoid termination of service; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal

notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. A public utility shall send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which he wants service disconnected to his residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which he wants service disconnected and sign an affidavit that he is not requesting termination of service as a means of evicting his tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Handicapped -- The state recognizes that the elderly and handicapped may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and handicapped due to communication barriers which may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-7(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-7(D)(1), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-7(D)(2), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and handicapped persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

R746-200-8. Informal Review.

A. A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. Mediation -- If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or

reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation -- The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. Commission Review -- If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, if any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-7(F), Termination of Service Without Notice.

R746-200-9. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

R746-200-10. Penalties.

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may use the informal and formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

KEY: public utilities, rules, utility service shutoff
November 1, 2013 **54-4-1**
Notice of Continuation November 28, 2012 **54-4-7**
54-7-9
54-7-25

R850. School and Institutional Trust Lands, Administration.
R850-5. Payments, Royalties, Audits, and Reinstatements.
R850-5-100. Authorities.

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Section 53C-1-302(1)(a)(ii) of the Utah Code entitling the Director of the School and Institutional Trust Lands Administration to establish fees, procedures and rules for management of the agency.

R850-5-200. Payments.

Payments include rentals, royalties or any other financial obligation owed under the terms of a lease, permit or any other agreement.

1. As a matter of convenience, the agency allows parties other than the obligee to remit payments on the obligee's behalf; however, this practice in no way relieves the obligee of any statutory or contractual obligations concerning the proper and timely payments or the proper and timely filing of reports. For practical reasons, the agency often makes direct requests for reports and other records from parties other than the obligees. Payors should be aware that their actions subject leases to cancellation or subject delinquent royalties to interest charges. It is, therefore, in the best interest of all parties to cooperate in responsibly discharging their obligations to each other and to the Trust Lands Administration.

2. The obligee bears final responsibility for payments. Payments must be for the full amount owed. Partial payments will only be accepted if approved in writing by the agency before submission. In order to fulfill payment obligations of a lease, permit, or other financial contract with the agency, payments must be received as defined in subsection 3 of this rule by the appropriate due dates and must be accompanied by the appropriate report. If the obligee submits payment by electronic fund transfer then appropriate supporting documentation must be submitted by electronic data transfer on the same day.

3. Payments will be considered received if sent by electronic fund transfer, delivered to the agency, or if the postmark stamped on the envelope is dated on or before the due date. If the post office cancellation mark is illegible, erroneous, or omitted, the payment will be considered timely if the sender can establish by competent evidence that the payment was deposited in the United States mail on or before the date for filing or paying. If the due date or cancellation date falls upon a Saturday, Sunday, or legal holiday, the payment shall be considered timely if received as defined herein by the next business day.

4. A $30 return check charge or the actual charge levied by the bank, whichever is greater, will be assessed on all checks returned by the bank. The check must be replaced by cash, certified funds, or immediately available funds. The Director may require future payments with certified funds when notified in writing. If replacement funds are received after the required due date, R850-5-200(6) will be applied.

5. Any financial obligation not received by its contractual due date will initiate a written cancellation notice by certified mail, return receipt requested. The cancellation date for any lease/permit or other contractual agreement unless otherwise specified by the contract, is defined as 30 days after the postmark date stamped on the U.S. Postal Service Receipt for Certified Mail of the cancellation notice. In the event payment is not received by the agency on or before the cancellation date, the lease, permit or other contractual agreement will be subject to cancellation, forfeiture or termination without further notice.

A default in the payment of any installment of principal or interest due under the terms of any land purchase agreement not received by the agency more than 30 days after the due date shall initiate a certified billing, return receipt requested. If all sums then due and payable are not received within 30 days after the mailing of the U.S. Postal Service certified notice, the agency may elect any of the remedies as outlined in R850-80-700(8). If the cancellation date falls on a weekend or holiday, payment will be accepted the next business day until 5 p.m.

6. A late penalty of 6% or $30, whichever is greater, shall be charged after failure to pay any financial obligation, excluding royalties as provided in R850-5-300(2), within the time limit under which such payment is due.

7. Subject to R850-4-300, rental payments received after the due date which do not include a late fee may be returned to the lessee by certified mail, return receipt requested. Payment may only be accepted for the full amount due.

R850-5-300. Royalties.

1. Royalty Reports and Reporting Periods

(a) All royalty payments shall be made payable to the School and Institutional Trust Lands Administration and shall be accompanied by a royalty report on a form specified by the agency. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the agency to deposit the royalty to the correct institutional fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

(c) Any report submitted which includes entries as described below, may be returned and may be made subject to the penalty provisions of this rule.

i) Any report including adjustments to reporting periods more than 24 months prior to the current report period.

ii) Amendments to prior report periods creating a net adjustment of less than $10.

iii) Any oil and gas royalty report line of original entry submitted after the first 180 days following the month of first production with a volume entry of zero which is subsequently amended with the actual volume.

2. Interest on Delinquent Royalties

Interest shall be based on the prime rate of interest at the beginning of each month as approved by the Director and documented in the agency's Director's Minutes, plus 4%. However, interest will not be assessed for prior period adjustments or amendments except as provided in R850-5-300(1)(c) and for amounts of additional royalties due discovered during any audit action. Also, interest will not be accrued or billed for amounts less than $30.

R850-5-400. Audits.

The agency shall have the right at reasonable times and intervals to audit the books and records of any lessee/permittee/payor and to inspect the leased/permitted premises and conduct field audits for the purpose of determining whether there has been compliance with the rules or the terms of agreement.

R850-5-500. Reinstatements.

1. The director may reinstate the following specific leases, permits, and easements, in the event of their cancellation, upon filing of a request for reinstatement, the payment of all late fees, reinstatement fees, and rental fees in arrears, based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries:

(a) Special use leases issued using a competitive process within 60 days of cancellation.

(b) Special use leases issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(c) Grazing permits within 60 days of cancellation with the exception that grazing permits cancelled for reasons of non-payment of grazing fees may be reinstated by the director without a written finding.

(d) Easements within 60 days of cancellation provided that:

i) if the easement term is perpetual, then the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15, the ending date of the easement shall be set so that there will be 15 years remaining in the easement;

ii) if the easement term is not perpetual, easements shall be reinstated only for the balance of the original term; and

iii) the applicant for an easement reinstatement agrees to pay the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the request for reinstatement is submitted.

(e) Materials permits within 60 days of cancellation.

(f) Materials permits issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

2. The director may reinstate any application for lease, permit, easement, exchange, or sale cancelled pursuant to R850-30, R850-40-700(3), or R850-80 upon the filing of a request for reinstatement and the payment of applicable reinstatement fees, and based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries.

KEY: administrative procedures
October 22, 2013 53C-1-302(1)(a)(ii)
Notice of Continuation June 27, 2012

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division Conferences Pursuant to Utah Code Ann. Sections 59-1-210 and 63G-4-102.

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

(1) A request may be oral or written.

(2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.

(3) The party requesting a conference will be notified of the result:

(a) orally or in writing;

(b) in person or through counsel; and

(c) at the conclusion of the conference or within a reasonable time thereafter.

(4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

(2) Appeals to the commission shall include:

(a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;

(b) a copy of the notice required under Section 59-2-919.1;

(c) a copy of the minutes of the board of equalization;

(d) a copy of the property record maintained by the assessor;

(e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;

(f) a copy of the evidence submitted by the parties to the board of equalization;

(g) a copy of the petition for redetermination; and

(h) a copy of the decision of the board of equalization.

(3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.

(5) Appeals to the commission shall be on the merits except for the following:

(a) dismissal for lack of jurisdiction;

(b) dismissal for lack of timeliness;

(c) dismissal for lack of evidence to support a claim for relief.

(6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

(b) A party may raise a new issue before the commission.

(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the

commission determines that:

(a) dismissal under Subsection (5)(a) or (c) was improper;

(b) the taxpayer failed to exhaust all administrative remedies at the county level;

(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;

(d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or

(e) a new issue is raised before the commission by a party.

(9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Sections 41-3-209, 59-1-210, 59-1-403, and 59-1-405.

(1) Hearings.

(a) Except as provided under Subsection (1)(b), and pursuant to Section 59-1-405, hearings related to appeals filed with the commission are confidential tax matters and not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(b) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

(2) Orders.

(a) Except as provided in Subsections (2)(b) through (e), written orders signed by the commission will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality; or

(ii) the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify a particular person.

(b) Property tax orders signed by the commission that do not contain commercial information will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required or allowed under state law.

(c)(i) Property tax orders signed by the commission that contain commercial information will be mailed to the appropriate persons in accordance with Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(ii) Copies of property tax orders described in Subsection (2)(c)(i), or information about them, will be made available to persons other than the persons described in Section 59-1-404 and rule R861-1A-37 under the following circumstances:

(A) the parties have affirmatively waived any claims to confidentiality;

(B) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, commercial information, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(C) the disclosure is required or allowed under state law.

(d) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 1a, Motor Vehicle Act, will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(e) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business

Regulation, are public information and may be publicized.

(3) Commission Notes and Workpapers.

(a) All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the commission, are protected, and access to the specific material is restricted to employees of the commission and its legal counsel only.

(b) Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

(4) Reciprocal Agreements.

(a) The commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with the federal government, other states, and political subdivisions within and without the state if the political subdivision, state, or federal government grant substantially similar privileges to this state.

(5) Statistical Information. The commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be made available after review and approval of the commission.

(6) Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (6), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) The commission may publicize the following information relating to a delinquent taxpayer:

(i) name;

(ii) address;

(iii) the amount of money owed by tax type; and

(iv) any legal action taken by the commission, including charges filed and property seized.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;

(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;

(iii) a description of the nature and extent of the individual's disability;

(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

(v) a description of the requested accommodation if an accommodation has been identified.

(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

(a) The reply shall advise the individual that:

(i) the requested accommodation is being supplied; or

(ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

(iii) the request for accommodation is denied. A reason for the denial must be included; or

(iv) additional time is necessary to review the request. A projected response date must be included.

(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.

(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

(a) Requests for review shall be directed to:

Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.

(c) The request for review shall include:

(i) the individual's name and address;

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

(iii) a copy of the accommodation coordinator's reply;

(iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

(v) a description of the accommodation desired; and

(vi) the signature of the individual or the individual's legal representative.

(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.

(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

(7) Individuals with a disability who are dissatisfied with

the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

(i) Internal Audit;

(ii) Appeals;

(iii) Economic and Statistical; and

(iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

(i) Administration;

(ii) Taxpayer Services;

(iii) Motor Vehicle;

(iv) Auditing;

(v) Property Tax;

(vi) Processing; and

(vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under $10,000, or offers in compromise agreements in amounts under $10,000;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of $10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of $10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office;

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

(f) liaison with the Legislature.

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters

delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-1-1410, 59- 2-1007, 59-7-517, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4- 401, 68-3-7, and 68-3-8.5.

(1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(c) A request for a hearing that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for redetermination that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(3) A petition for redetermination of a claim for refund filed in accordance with 59-1-1410 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for redetermination of a claim for refund that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(4)(a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle Enforcement Division under Title 41, Chapter 3, must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal.

(b) An appeal under Subsection (4)(a) is deemed to be timely if:

(i) in the case of mailed or hand-delivered documents:

(A) the petition is received in the commission offices on or before the close of business of the last day of the 30-day time period; or

(B) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day time period; or

(ii) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day time period.

(c) An appeal of an action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(5) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not

be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) The following may preside at a formal proceeding:

(a) a commissioner;

(b) an administrative law judge appointed by the commission; or

(c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:

(i) a commissioner;

(ii) an administrative law judge appointed by the commission; or

(iii) a hearing officer appointed by the commission.

(2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.

(ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile

number, e-mail address or other electronic means.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled

testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

(2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing.

(A) The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.

(B) If a party withdraws an appeal, the initial decision becomes final as of the date that is 30 days after the date of the issuance of the initial hearing decision.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) A party with standing may petition for a declaratory order to challenge:

(a) the commission's interpretation of statutory language as stated in an administrative rule; or

(b) the commission's grant of authority under a statute.

(3) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(4) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(5) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code

Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media

in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and

made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in Subsection (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in Subsection (4)(a) or (4)(b).

(5) Information that may be disclosed under Subsection 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under Subsection (5)(c)(i).

(6)(a) Except as provided in statute and Subsection (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside an action or proceeding by any person conducting or participating in any action or proceeding.

(b) Notwithstanding Subsection (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial

information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under Subsection (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute

reasonable cause for a waiver of penalty:

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.

(ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

(b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

(c) Death or Serious Illness:

(i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.

(ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.

(iii) The death or illness must have occurred on or immediately prior to the due date of the return.

(d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.

(e) Disaster Relief:

(i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.

(ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.

(iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

(f) Reliance on Erroneous Tax Commission Information:

(i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

(ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.

(iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.

(g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

(i) Reliance on Competent Tax Advisor:

(i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.

(ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error:

(i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

(ii) A letter from the bank verifying its error is required.

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;

(ii) if the error is caught and corrected by the taxpayer;

(iii) the length of time between the event cited and the filing date;

(iv) typographical or other written errors; and

(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) two commissioners are present at a single anchor location; or

(b) one commissioner is present at the anchor location.

(2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.

(3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under

Section 7502, Internal Revenue Code:
(1) DHL Express (DHL):
(a) DHL Same Day Service;
(b) DHL Next Day 10:30 a.m.;
(c) DHL Next Day 12:00 p.m.;
(d) DHL DHL Next Day 3:00 p.m.; and
(e) DHL 2nd Day Service;
(2) Federal Express (FedEx):
(a) FedEx Priority Overnight;
(b) FedEx Standard Overnight;
(c) FedEx 2 Day;
(d) FedEx International Priority; and
(e) FedEx International First; and
(3) United Parcel Service (UPS):
(a) UPS Next Day Air;
(b) UPS Next Day Air Saver;
(c) UPS 2nd Day Air;
(c) UPS 2nd Day Air A.M.;
(d) UPS Worldwide Express Plus; and
(e) UPS Worldwide Express.

R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:
(a) follow the procedures set forth in commission rules:
(i) R861-1A-9, Tax Commission as Board of Equalization;
(ii) R861-1A-11, Appeal of Corrective Action;
(iii) R861-1A-20, Time of Appeal;
(iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;
(v) R861-1A-23, Designation of Adjudicative Proceedings;
(vi) R861-1A-24, Formal Adjudicative Proceedings;
(vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;
(viii) R861-1A-27, Discovery;
(ix) R861-1A-28, Evidence in Adjudicative Proceedings;
(x) R861-1A-29, Decision, Orders, and Reconsideration;
(xi) R861-1A-30, Ex Parte Communications;
(xii) R861-1A-31, Declaratory Orders;
(xiii) R861-1A-32, Mediation Process;
(xiv) R861-1A-33, Settlement Agreements;
(xv) R861-1A-34, Private Letter Rulings;
(xvi) R861-1A-38, Class Actions;
(xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and
(xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and
(b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.
(2) Written minutes of a meeting under Subsection (1)(b) shall include:
(a) the date, time, and place of the meeting;
(b) the names of each person present at the meeting;
(c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;
(d) a record, by commissioner, of each vote taken by the commission;
(e) a summary of comments made by a person, other than a commissioner, present at the meeting; and
(f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.
(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:
(a) properly labeled or identified with the date, time, and place of the meeting; and
(b) a complete and unedited record of the meeting.

R861-1A-46. Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110.

(1) Definitions.
(a) "Division" means the Auditing Division of the commission.
(b) "Purchaser refund request" means:
(i) a refund request for sales tax overpaid; and
(ii) submitted by a person other than the seller that originally collected and remitted the sales tax to the commission.
(c) "Required information and documents" means, for each transaction included in a purchaser refund request:
(i) a description of the item for which a refund is requested;
(ii) the invoiced transaction date;
(iii) the taxable purchase amount;
(iv) the tax rate applied to the purchase amount;
(v) the invoice number;
(vi) invoices or receipts or other books and records that show the items purchased and sales tax charged;
(vii) the sales tax paid;
(viii) the reason and basis in Utah law for exempting or excluding the item from sales tax;
(ix) documentation that verifies that the item qualifies for a sales tax exemption or exclusion;
(x) the amount of sales tax overpaid;
(xi) proof of payment of sales tax, such as a canceled check, bank statement, credit card statement or receipt, letter from the seller, or other books and records that demonstrate payment was made;
(xii) if an agent applies for the refund on behalf of a purchaser, a power of attorney;
(xiii) the name and address of the seller; and
(xiv) a signed statement that the seller that calculated and remitted the sales tax:
(A) has not provided a sales tax refund or credit; and
(B) will not be asked to provide a sales tax refund or credit.
(2)(a) Except as provided in Subsection (3), a person submitting a purchaser refund request shall include the required information and documents with the application to the division.
(b) The items described in Subsection (2)(a) shall be provided to the division in the format and manner prescribed by the division.
(c) If the application is not accompanied by all of the required information and documents, the division shall send a notice to the person that submitted the purchaser refund request.
(d) The notice described in Subsection (2)(c) shall:
(i) indicate the required information and documents that are missing; and
(ii) allow the person submitting the purchaser refund request 30 days to provide the missing required information and documents to the division.
(e)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (2)(d)(i) within the time period described in Subsection (2)(d)(ii) may contact the division to request an extension of time to provide the required information and documents that are missing.
(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall

provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (2)(e)(i).

(f) If the division has not received all of the required information and documents within the time period described in Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e), the division shall:

(i) evaluate the purchaser refund request based solely on the required information and documents received; and

(ii) dismiss for lack of evidence requests for refunds on items for which the division has not received the required information and documents.

(g)(i) Dismissals under Subsection (2)(f) may be appealed to the commission.

(ii) On an appeal under Subsection (2)(g)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e).

(3)(a) A person who submits a purchaser refund request may, at the time the application for the refund is filed, request the division use a sampling method in its review of the purchaser refund request.

(b) A person requesting a sampling method of review under Subsection (3)(a) shall include the following information for each transaction included in the purchaser refund request with the application to the division:

(i) the invoice number;

(ii) the invoiced transaction date;

(iii) the taxable purchase amount;

(iv) the tax rate applied to the purchase amount;

(v) the sales tax paid;

(vi) the amount of sales tax overpaid;

(vii) the name and address of the seller

(viii) a description of the item for which a refund is requested; and

(ix) the reason and basis in Utah law the item is exempt or excluded from sales tax.

(c) The items described in Subsection (3)(b) shall be provided to the division in the format and manner prescribed by the division.

(4)(a) If the division and a person submitting a purchaser refund request agree to the division's use of a sampling method in its review of the purchaser refund request, the division shall:

(i) determine the items that will be included in the sample;

(ii) notify the person submitting the purchaser refund request of the items that will be included in the sample and the information and documents that must be submitted to the division; and

(iii) allow the person submitting the purchaser refund request 30 days to provide the information and documents to the division in the format and manner prescribed by the division.

(b)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (4)(a)(ii) within the time period described in Subsection (4)(a)(iii) may contact the division to request an extension of time to provide the information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (4)(b)(i).

(c) Information and documents described in Subsection (4)(a)(ii) that are not received by the end of the period described in Subsection(4)(a), or if applicable, within an extension of time granted under Subsection (4)(b), shall be:

(i) considered errors; and

(ii) included in the overall error factor by which the purchaser refund request is decreased.

(d)(i) Errors under Subsection (4)(c) may be appealed to the commission.

(ii) On an appeal under Subsection (4)(d)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (4)(a), or if applicable, within an extension of time granted under Subsection (4)(b).

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements

October 24, 2013 **10-1-405**
Notice of Continuation January 3, 2012 **41-1a-209**
52-4-207
59-1-205
59-1-207
59-1-210
59-1-301
59-1-302.1
59-1-304
59-1-401
59-1-403
59-1-404
59-1-405
59-1-501
59-1-502.5
59-1-602
59-1-611
59-1-705
59-1-706
59-1-1004
59-1-1404
59-7-505
59-10-512
59-10-532
59-10-533
59-10-535
59-12-107
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59-2-212
59-2-701
59-2-705
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59-2-1006
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59-2-704
59-2-924
59-7-517
63G-3-301
63G-4-102
76-8-502
76-8-503
59-2-701
63G-4-201
63G-4-202
63G-4-203
63G-4-204

63G-4-205 through 63G-4-209
63G-4-302
63G-4-401
63G-4-503
63G-3-201(2)
68-3-7
68-3-8.5
69-2-5
42 USC 12201
28 CFR 25.107 1992 Edition

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;

(b) the address of the property; and
(c) the serial number of the property.
(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:
(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.
(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.
(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.
(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.
(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.
(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.
(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.
(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.
(i) All definitions contained in Section 11-13-103 apply to this rule.
(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.
(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.
(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.
(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:
(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.
(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.
(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.
(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.
(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.
(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.
(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.
(2) The ad valorem training and designation program consists of several courses and practica.
(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).
(b) The courses comprising the basic designation program

are:

(i) Course 101 - Basic Appraisal Principles;

(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);

(iii) Course 501 - Assessment Practice in Utah;

(iv) Course 502 - Mass Appraisal of Land;

(v) Course 503 - Development and Use of Personal Property Schedules;

(vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and

(vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 501 and 502;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the

cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3, as well as tax increment distributions and related taxable values of redevelopment renewal agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to

the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to

the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustmentsor other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b).(c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2014 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in

length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

(A) barricades/warning signs;

(B) library materials;

(C) patterns, jigs and dies;

(D) pots, pans, and utensils;

(E) canned computer software;

(F) hotel linen;

(G) wood and pallets;

(H) video tapes, compact discs, and DVDs; and

(I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
13	71%
12	42%
11 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:
(A) CNC mills;
(B) CNC lathes;
(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.
(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
13	90%
12	81%
11	71%
10	59%
09	49%
08	38%
07	27%
06 and prior	14%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.
(i) Examples of property in this class include:
(A) office machines;
(B) alarm systems;
(C) shopping carts;
(D) ATM machines;
(E) small equipment rentals;
(F) rent-to-own merchandise;
(G) telephone equipment and systems;
(H) music systems;
(I) vending machines;
(J) video game machines; and
(K) cash registers and point of sale equipment.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
13	84%
12	69%
11	54%
10	35%
09 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.
(i) Examples of property in this class include:
(A) furniture;
(B) bars and sinks:
(C) booths, tables and chairs;
(D) beauty and barber shop fixtures;
(E) cabinets and shelves;
(F) displays, cases and racks;
(G) office furniture;
(H) theater seats;
(I) water slides; and
(J) signs, mechanical and electrical.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
13	91%
12	83%
11	75%
10	64%
09	55%
08	45%
07	36%
06	25%
05 and prior	13%

(e) Class 6 - Heavy and Medium Duty Trucks.
(i) Examples of property in this class include:
(A) heavy duty trucks;
(B) medium duty trucks;
(C) crane trucks;
(D) concrete pump trucks; and
(E) trucks with well-boring rigs.
(ii) Taxable value is calculated by applying the percent good factor against the cost new.
(iii) Cost new of vehicles in this class is defined as follows:
(A) the documented actual cost of the vehicle for new vehicles; or
(B) 75 percent of the manufacturer's suggested retail price.
(iv) For state assessed vehicles, cost new shall include the value of attached equipment.
(v) The 2014 percent good applies to 2014 models purchased in 2013.
(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
14	90%
13	71%
12	65%
11	60%
10	54%
09	48%
08	42%
07	37%
06	31%
05	25%
04	20%
03	14%
02	8%
01 and prior	3%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.
(i) Examples of property in this class include:
(A) medical and dental equipment and instruments;
(B) exam tables and chairs;
(C) microscopes; and
(D) optical equipment.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
13	93%
12	87%
11	80%
10	70%
09	64%
08	57%
07	50%
06	42%
05	34%
04	23%
03 and prior	12%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:
(A) manufacturing machinery;
(B) amusement rides;
(C) bakery equipment;
(D) distillery equipment;
(E) refrigeration equipment;
(F) laundry and dry cleaning equipment;
(G) machine shop equipment;
(H) processing equipment;
(I) auto service and repair equipment;
(J) mining equipment;
(K) ski lift machinery;
(L) printing equipment;
(M) bottling or cannery equipment;
(N) packaging equipment; and
(O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):
(I) VGO (Vacuum Gas Oil) reactor;
(II) HDS (Diesel Hydrotreater) reactor;
(III) VGO compressor;
(IV) VGO furnace;
(V) VGO and HDS high pressure exchangers;
(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
(VII) VGO, amine, SWS, and HDS separators and drums;
(VIII) VGO and tank pumps;
(IX) TGU modules; and
(X) VGO tank and air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:
(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
13	93%
12	87%
11	80%
10	71%
09	64%
08	57%
07	50%
06	42%
05	34%
04	23%
03 and prior	12%

(h) Class 9 - Off-Highway Vehicles.
(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
13	94%
12	90%
11	86%
10	78%
09	73%
08	68%
07	64%
06	59%
05	54%
04	47%
03	38%
02	29%
01	19%
00 and prior	9%

(j) Class 11 - Street Motorcycles.
(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.
(i) Examples of property in this class include:
(A) data processing equipment;
(B) personal computers;
(C) main frame computers;
(D) computer equipment peripherals;
(E) cad/cam systems; and
(F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
13	62%
12	46%
11	21%
10	9%
09 and prior	7%

(l) Class 13 - Heavy Equipment.
(i) Examples of property in this class include:
(A) construction equipment;
(B) excavation equipment;
(C) loaders;
(D) batch plants;
(E) snow cats; and
(F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2014 model equipment purchased in 2013 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
13	50%
12	47%
11	44%
10	42%
09	39%
08	36%
07	33%
06	30%
05	27%
04	24%
03	21%
02	18%
01	16%
00 and prior	12%

(m) Class 14 - Motor Homes.
(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The 2014 percent good applies to 2014 models purchased in 2013.

(iii) Motor homes have a residual taxable value of $1,000.

TABLE 14

Model Year	Percent Good of Cost New
14	90%
13	68%
12	64%
11	60%
10	56%
09	53%
08	49%
07	45%
06	41%
05	37%
04	33%
03	29%
02	25%
01	22%
00	18%
99	14%
98 and prior	10%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

(A) crystal growing equipment;

(B) die assembly equipment;

(C) wire bonding equipment;

(D) encapsulation equipment;

(E) semiconductor test equipment;

(F) clean room equipment;

(G) chemical and gas systems related to semiconductor manufacturing;

(H) deionized water systems;

(I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
13	47%
12	34%
11	24%
10	15%
09 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

(A) billboards;

(B) sign towers;

(C) radio towers;

(D) ski lift and tram towers;

(E) non-farm grain elevators; and

(F) bulk storage tanks.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
13	96%
12	93%
11	91%
10	85%
09	82%
08	80%
07	78%
06	75%
05	74%
04	70%
03	64%
02	57%
01	50%
00	44%
99	37%
98	30%
97	23%
96	15%
95 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

(A) houseboats equal to or greater than 31 feet in length;

(B) sailboats equal to or greater than 31 feet in length; and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

(A) is not included in Class 17;

(B) may not be valued using Table 17; and

(C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(A) the following publications or valuation methods:

(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2014 percent good applies to 2014 models purchased in 2013.

(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
14	90%
13	63%
12	61%
11	58%
10	56%
09	53%
08	51%
07	48%
06	46%
05	43%
04	41%
03	38%
02	36%
01	33%
00	31%
99	28%
98	26%
97	24%
96	21%

95	19%
94	16%
93 and prior	12%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

(A) oil and gas exploration equipment;

(B) distillation equipment;

(C) wellhead assemblies;

(D) holding and storage facilities;

(E) drill rigs;

(F) reinjection equipment;

(G) metering devices;

(H) cracking equipment;

(I) well-site generators, transformers, and power lines;

(J) equipment sheds;

(K) pumps;

(L) radio telemetry units; and

(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
13	92%
12	83%
11	81%
10	75%
09	71%
08	66%
07	61%
06	56%
05	50%
04	42%
03	32%
02	21%
01 and prior	11%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

(A) dry freight van trailers;

(B) refrigerated van trailers;

(C) flat bed trailers;

(D) dump trailers;

(E) livestock trailers; and

(F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2014 percent good applies to 2014 models purchased in 2013.

(iv) Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
14	95%
13	90%
12	85%
11	80%
10	75%
09	70%
08	65%
07	59%
06	54%
05	49%
04	44%
03	39%
02	34%
01	29%
00	24%
99	18%
98 and prior	13%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

(A) walls and partitions;

(B) plumbing and roughed-in fixtures;

(C) floor coverings other than carpet;

(D) store fronts;

(E) decoration;

(F) wiring;

(G) suspended or acoustical ceilings;

(H) heating and cooling systems; and

(I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
13	94%
12	88%
11	82%
10	77%
09	71%
08	65%
07	59%
06	54%
05	48%
04	42%
03	36%
02 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

(A) aircraft parts manufacturing jigs and dies;

(B) aircraft parts manufacturing molds;

(C) aircraft parts manufacturing patterns;

(D) aircraft parts manufacturing taps and gauges; and

(E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
13	84%
12	70%
11	54%
10	36%
09	20%
08 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

(A) electrical power generators; and

(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
13	97%
12	95%
11	92%
10	90%
09	87%
08	84%
07	82%
06	79%
05	77%
04	74%
03	71%
02	69%
01	66%
00	64%
99	61%
98	58%
97	56%
96	53%
95	51%
94	48%
93	45%
92	43%
91	40%
90	38%
89	35%
88	32%
87	30%
86	27%
85	25%
84	22%
83	19%
82	17%
81	14%
80	12%
79 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of $1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
13	75%
12	50%
11	25%
10 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2014.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

(a) the owner of record of the property;

(b) the property parcel, account, or serial number;

(c) the location of the property;

(d) the tax year in which the exemption was originally granted;

(e) a description of any change in the use of the real or personal property since January 1 of the prior year;

(f) the name and address of any person or organization conducting a business for profit on the property;

(g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

(h) a description of any personal property leased by the owner of record for which an exemption is claimed;

(i) the name and address of the lessor of property described in Subsection (2)(h);

(j) the signature of the owner of record or the owner's authorized representative; and

(k) any other information the county may require.

(3) The annual statement shall be filed:

(a) with the county legislative body in the county in which the property is located;

(b) on or before March 1; and

(c) using:

(i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

(ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind,

veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

(i) company homes occupied by superintendents and other employees on 24-hour call;

(ii) storage facilities for railroad operations;

(iii) communication facilities; and

(iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

(i) land leased to service station operations;

(ii) grocery stores;

(iii) apartments;

(iv) residences; and

(v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and

approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of

domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(A) the owner of record of the property;

(B) the property parcel number;

(C) the location of the property;

(D) the basis of the owner's knowledge of the use of the property;

(E) a description of the use of the property;

(F) evidence of the domicile of the inhabitants of the property; and

(G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

(A) on a form provided by the county; or

(B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2013 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	872
2)	Cache	752
3)	Carbon	560
4)	Davis	914
5)	Emery	537
6)	Iron	851
7)	Kane	449
8)	Millard	853
9)	Salt Lake	763
10)	Utah	801
11)	Washington	703
12)	Weber	856

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	766
2)	Cache	642
3)	Carbon	446
4)	Davis	803
5)	Duchesne	523
6)	Emery	432
7)	Grand	414
8)	Iron	746

9)	Juab	477
10)	Kane	345
11)	Millard	748
12)	Salt Lake	656
13)	Sanpete	576
14)	Sevier	602
15)	Summit	497
16)	Tooele	487
17)	Utah	693
18)	Wasatch	524
19)	Washington	599
20)	Weber	751

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	610
2)	Box Elder	603
3)	Cache	487
4)	Carbon	295
5)	Davis	646
6)	Duchesne	367
7)	Emery	272
8)	Garfield	227
9)	Grand	261
10)	Iron	593
11)	Juab	321
12)	Kane	191
13)	Millard	592
14)	Morgan	416
15)	Piute	358
16)	Rich	191
17)	Salt Lake	499
18)	San Juan	195
19)	Sanpete	422
20)	Sevier	448
21)	Summit	338
22)	Tooele	326
23)	Uintah	397
24)	Utah	531
25)	Wasatch	364
26)	Washington	440
27)	Wayne	354
28)	Weber	597

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	502
2)	Box Elder	498
3)	Cache	378
4)	Carbon	190
5)	Daggett	208
6)	Davis	540
7)	Duchesne	257
8)	Emery	169
9)	Garfield	122
10)	Grand	158
11)	Iron	484
12)	Juab	213
13)	Kane	87
14)	Millard	482
15)	Morgan	308
16)	Piute	250
17)	Rich	89
18)	Salt Lake	387
19)	San Juan	89
20)	Sanpete	317
21)	Sevier	343
22)	Summit	234
23)	Tooele	222
24)	Uintah	293
25)	Utah	427
26)	Wasatch	260
27)	Washington	331
28)	Wayne	250
29)	Weber	487

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	588
2)	Box Elder	637
3)	Cache	588
4)	Carbon	588
5)	Davis	642
6)	Duchesne	588
7)	Emery	588
8)	Garfield	588
9)	Grand	588
10)	Iron	588
11)	Juab	588
12)	Kane	588
13)	Millard	588
14)	Morgan	588
15)	Piute	588
16)	Salt Lake	588
17)	San Juan	588
18)	Sanpete	588
19)	Sevier	588
20)	Summit	588
21)	Tooele	588
22)	Uintah	588
23)	Utah	647
24)	Wasatch	588
25)	Washington	696
26)	Wayne	588
27)	Weber	642

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	247
2)	Box Elder	266
3)	Cache	275
4)	Carbon	133
5)	Daggett	163
6)	Davis	278
7)	Duchesne	170
8)	Emery	142
9)	Garfield	107
10)	Grand	137
11)	Iron	268
12)	Juab	156
13)	Kane	112
14)	Millard	200
15)	Morgan	202
16)	Piute	196
17)	Rich	108
18)	Salt Lake	231
19)	Sanpete	199
20)	Sevier	204
21)	Summit	207
22)	Tooele	192
23)	Uintah	212
24)	Utah	257
25)	Wasatch	214
26)	Washington	234
27)	Wayne	177
28)	Weber	311

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	56
2)	Box Elder	102
3)	Cache	129
4)	Carbon	53
5)	Davis	55
6)	Duchesne	58
7)	Garfield	52
8)	Grand	53
9)	Iron	53
10)	Juab	54
11)	Kane	52

12)	Millard	51
13)	Morgan	69
14)	Rich	52
15)	Salt Lake	58
16)	San Juan	59
17)	Sanpete	58
18)	Summit	52
19)	Tooele	56
20)	Uintah	58
21)	Utah	54
22)	Wasatch	52
23)	Washington	52
24)	Weber	83

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	17
2)	Box Elder	64
3)	Cache	90
4)	Carbon	16
5)	Davis	17
6)	Duchesne	21
7)	Garfield	16
8)	Grand	16
9)	Iron	16
10)	Juab	17
11)	Kane	16
12)	Millard	15
13)	Morgan	31
14)	Rich	16
15)	Salt Lake	17
16)	San Juan	19
17)	Sanpete	21
18)	Summit	16
19)	Tooele	16
20)	Uintah	21
21)	Utah	17
22)	Wasatch	16
23)	Washington	15
24)	Weber	48

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	75
2)	Box Elder	76
3)	Cache	73
4)	Carbon	53
5)	Daggett	54
6)	Davis	62
7)	Duchesne	70
8)	Emery	73
9)	Garfield	80
10)	Grand	81
11)	Iron	77
12)	Juab	66
13)	Kane	75
14)	Millard	79
15)	Morgan	69
16)	Piute	92
17)	Rich	67
18)	Salt Lake	70
19)	San Juan	80
20)	Sanpete	64
21)	Sevier	65
22)	Summit	74
23)	Tooele	73
24)	Uintah	84
25)	Utah	67
26)	Wasatch	53
27)	Washington	66
28)	Wayne	91
29)	Weber	72

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	23
2)	Box Elder	23
3)	Cache	24
4)	Carbon	16
5)	Daggett	15
6)	Davis	20
7)	Duchesne	23
8)	Emery	22
9)	Garfield	24
10)	Grand	23
11)	Iron	23
12)	Juab	20
13)	Kane	24
14)	Millard	25
15)	Morgan	22
16)	Piute	27
17)	Rich	21
18)	Salt Lake	22
19)	San Juan	26
20)	Sanpete	19
21)	Sevier	19
22)	Summit	21
23)	Tooele	21
24)	Uintah	29
25)	Utah	24
26)	Wasatch	18
27)	Washington	22
28)	Wayne	29
29)	Weber	21

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	17
2)	Box Elder	18
3)	Cache	16
4)	Carbon	13
5)	Daggett	12
6)	Davis	13
7)	Duchesne	14
8)	Emery	15
9)	Garfield	17
10)	Grand	16
11)	Iron	16
12)	Juab	14
13)	Kane	16
14)	Millard	17
15)	Morgan	14
16)	Piute	19
17)	Rich	14
18)	Salt Lake	15
19)	San Juan	17
20)	Sanpete	14
21)	Sevier	14
22)	Summit	15
23)	Tooele	14
24)	Uintah	20
25)	Utah	14
26)	Wasatch	13
27)	Washington	14
28)	Wayne	19
29)	Weber	15

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	6
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	6
9)	Garfield	5
10)	Grand	6
11)	Iron	6
12)	Juab	5
13)	Kane	5

14)	Millard	5
15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land	
1) All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping

trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell

and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing

capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they

shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the commission, the procedures contained in this rule must be followed.

(3) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(4) If the evidence or documentation required under Subsection (3)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(5) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.

(6) If the information required under Subsection (3) is supplied, the county board of equalization shall render a decision on the merits of the case.

(7) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(8) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(9)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (9)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(10) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (9).

(11) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(12) Decisions by the county board of equalization are final orders on the merits.

(13) Except as provided in Subsection (15), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because

of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(14) Appeals accepted under Subsection (13)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(15) The provisions of Subsection (13) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(16) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus

four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

R884-24P-73. Urban Farming Assessment Pursuant to Utah Code Ann. Section 59-2-1703.

(1) For purposes of the property tax assessment for land used for urban farming, land is actively devoted to urban farming under Subsection 59-2-1703(2)(a)(iii) if the production per acre for a given area and a given type of land meets the productive capabilities of land classified as Irrigated I.

(2) The value of land qualifying for valuation under Section 59-2-1703 shall be determined by reference to Table 1, Irrigated I, in R884-24P-53.

KEY: taxation, personal property, property tax, appraisals
October 24, 2013 **Art. XIII, Sec 2**
Notice of Continuation January 3, 2012 **9-2-201**
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
59-2-210
59-2-211
59-2-301
59-2-301.3
59-2-302
59-2-303
59-2-303.1
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-514
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1115
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1308.5
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365
59-2-1703

R907. Transportation, Administration.
R907-66. Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects.
R907-66-1. Reason for Incorporation - Federal-Aid Projects and State Projects.

(1) 23 U.S.C. 112 requires States to use the relevant parts of the Federal Acquisition Regulations (FAR), contained in 48 CFR Chapter 1 to calculate appropriate contract costs in all Federal-Aid transportation projects. Previously, federal law allowed States to develop their own cost principles and procedures in Federal-Aid projects.

(2) Consequently, the Department adopts and incorporates 48 CFR Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in Federal-Aid transportation projects.

(3) Because many transportation projects that the Department administers receive federal aid, the Department believes it is generally most efficient to also use FAR when calculating contract cost principles and procedures in transportation projects financed solely with state funds. Therefore, the Department also adopts and incorporates 48 CFR Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in most state-financed transportation projects.

R907-66-2. Financial Screening.

(1) To verify that the calculated overhead and hourly billing rates comply with FAR, UDOT conducts an initial financial screening and approval of consultants desiring to submit a Statement of Qualification (SOQ) for architecture and engineering service contracts.

(2) Consultants shall update their financial screening information by submitting a new completed financial screening application and related information to the Consultant Services Division. The consultant shall file the updated applications annually, on the anniversary date of the initial filing.

R907-66-3. Contract Negotiations.

(1) UDOT negotiates consultant contracts with the firm it considers most qualified to provide such services, using guidelines developed by the Consultant Services Division. UDOT prepares independent estimates of the value of such services for use in negotiations.

(2) Negotiations follow state and federal procurement procedures and are based on compensation that UDOT considers fair and reasonable. Negotiations will end when UDOT decides that it cannot agree on terms with the first most qualified firm. UDOT will then begin negotiations with the next most qualified firm. This process continues until either mutually agreeable terms are negotiated or UDOT chooses to begin the selection process again to identify other firms qualified to provide such services.

(3) The guidelines for both selection and negotiations are public information and can be obtained by contacting the Consultant Services Division.

R907-66-4. Award of Contracts.

UDOT awards the contract to the best qualified consultant with which it can negotiate a fair and reasonable cost as required by state rules and FAR and in accordance with UDOT selection procedures and guidelines.

R907-66-5. Small Purchase Cap.

To be consistent between federal-aid projects and state-financed projects, UDOT adopts the federal small purchase cap or simplified acquisition threshold established in 48 CFR 2.101, which is currently $150,000.

R907-66-6. Execution of Contracts.

UDOT considers no contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.

KEY: transportation, contracts
December 8, 2011 63G-6-105
Notice of Continuation October 12, 2011 72-1-201

R986. Workforce Services, Employment Development.
R986-400. General Assistance.
R986-400-401. Authority for General Assistance (GA) and Applicable Rules.

(1) The Department provides GA financial assistance pursuant to Section 35A-3-401, et seq. as funding permits.

(2) Rule R986-100 applies to GA, except as noted in this rule.

(3) Applicable provisions of R986-200 apply to GA except as noted in this rule.

(4) The citizenship and alienage requirements of the Food Stamp Program apply to GA.

R986-400-402. General Provisions.

(1) GA provides temporary financial assistance to single persons and married couples who have no dependent children residing with them 50% or more of the time and who have a physical or mental health impairment that prevents basic work activities in any occupation. This means that the applicant or client is unable to work any number of hours at all in any occupation.

(2) The impairment must be expected to last at least 60 days after the date of application.

(3) Drug addiction and/or alcoholism alone is insufficient to meet the impairment requirement for GA as defined in Public Law 104-121.

(4) Married couples meet the impairment criteria and time limits on an individual basis. If the household includes an ineligible spouse, the income and assets of the ineligible spouse must be counted when determining the eligibility of the household and the ineligible spouse will not be included in the financial payment. The household can consist of any combination of impaired, non-impaired, short term disabled, or long term disabled as long as at least one spouse meets the eligibility requirements.

(5) GA is only available to a client who is at least 18 years old or legally or factually emancipated. Factual emancipation means the client has lived independently from his or her parents or guardians and has been economically self-supporting for a period of at least twelve consecutive months, and the client's parents have refused financial support.

(6) A client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(7) A person eligible for Bureau of Indian Affairs assistance is not eligible for GA financial assistance.

(8) In addition to the residency requirements in R986-100-106, residents in a group home that is administered under a contract with a governmental unit or administered by a governmental unit are not eligible for financial assistance.

(9) An individual receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, as defined by 20 CFR Part 416.1321 through 416.1330. An individual whose SSI benefits are suspended because he or she has not attained U.S. citizenship, may be eligible for GA if the individual actively pursues U.S. citizenship to regain SSI eligibility.

R986-400-403. Proof of Impairment.

(1) An applicant must provide current medical evidence of an impairment that prevents basic work activities in any occupation due to a physical or mental health condition and that the impairment is expected to last at least 60 days from the date of application. Evidence consists of a statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed Mental Health Therapist as defined in UCA 58-60-102. If an applicant has been approved for SSI/SSDI, and is waiting for the first check, no further medical evidence of impairment is necessary. Verification and evidence of social security approval must be included in the case record.

(2) An applicant must cooperate in the obtaining of a second opinion if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

R986-400-404. Participation Requirements.

(1) A GA client with an impairment that is expected to last 12 months or longer is required to sign the General Assistance Agreement Form within 30 days after the initial financial benefit has been issued. A GA client with an impairment that is expected to last at least 60 days, but less than 12 months, will not be required to sign the General Assistance Agreement Form.

(2) The requirement to sign the General Assistance Agreement form, complete an assessment and negotiate an employment plan is limited to clients with long term impairments expected to last 12 months or longer.

(3) If the impairment is expected to last 12 months or longer, the client must apply for SSI/SSDI benefits.

(4) A client must accept any and all offers of appropriate employment as determined by the Department. "Appropriate employment" means employment that pays a wage that meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate. The employment is not appropriate employment if the client is unable, due to physical or mental limitations, to perform the work.

(5) A client must cooperate in obtaining any and all other sources of income to which the client may be entitled including, SSI/SSDI, VA Benefits, and Workers' Compensation.

(6) A client who meets the eligible alien status requirements for GA but does not meet the eligible alien requirements for SSI can participate in activities that may help them to become eligible for SSI such as pursuing citizenship.

R986-400-405. Interim Aid for SSI Applicants.

(1) A client who has applied for SSI or SSDI benefits may be provided with GA financial assistance pending a determination on the application for SSI or SSDI. If the client is applying for SSI, he or she must sign an "Agreement to Repay Interim Assistance" form and agree to reimburse, or allow SSA to reimburse, the state of Utah for any and all GA financial assistance advanced pending a determination from SSA.

(2) Financial assistance will be immediately terminated without advance notice when SSA issues a payment or if the client fails to cooperate to the maximum extent possible in pursuing the application which includes cooperating fully with SSA and providing all necessary documentation to insure receipt of SSI or SSDI benefits.

(3) A client must fully cooperate in prosecuting an appeal of an SSI or SSDI denial at least to the Social Security ALJ level. If the ALJ issues an unfavorable decision, the client is not eligible for financial assistance unless an unrelated physical or mental health condition develops and is verified.

(4) If a client's SSI or SSDI benefits have been terminated due to a physical or mental health condition, the client is ineligible unless an unrelated physical or mental health condition develops and is verified.

R986-400-406. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the

employment plan without reasonable cause, financial assistance will be terminated immediately. Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling and may include reasons like verified illness or extraordinary transportation problems.

(2) If a client's financial assistance has been terminated under this section, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client must resolve the reason for the termination and participate to the maximum extent possible in all of the required activities of the employment plan. The client does not need to reapply if he or she resolves the reason for termination by the end of the month following the termination;

(b) the second time financial assistance is terminated, the client will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and participating to the maximum extent possible in the required employment activity; and

(c) the third and subsequent time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

R986-400-407. Income and Assets Limits, Amount of Assistance, and Assistance Start Date.

(1) The provisions of R986-200 are used for determining asset and income eligibility except;

(a) the income and assets of an SSI recipient living in the household are counted if that individual is legally responsible for the client;

(b) the total gross income of an alien's sponsor and the sponsor's spouse is counted as unearned income for the alien. If a person sponsors more than one alien, the total gross income of the sponsor and the sponsor's spouse is counted for each alien. Indigent aliens, as defined by 7 CFR 273.4(c)(3)(iv), are not exempt;

(c) one vehicle, with a maximum of $8,000 equity value, is not counted. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of $8,000 Beginning October 1, 2007, all motorized vehicles will be exempt.

(2) The financial assistance payment level is set by the Department and available for review at all Department local offices.

(3) If otherwise eligible, assistance will be paid effective the first day of the month following the month the application is received by the Department provided the application is completed within 30 days. If the application is not completed within 30 days, but is completed within 60 days, the first day the client can be eligible is the day all verification requested by the Department is received by the Department. If the application is not completed within 60 days, a new application is required. An application is complete when all information and verification requested by the Department has been provided by the applicant.

R986-400-408. Time Limits.

(1) An individual cannot receive GA financial assistance for more than 12 months out of a rolling 60-month period. Any month in which a client received a full or partial GA financial assistance payment count toward the 12 month limit.

(a) A client with a short term impairment that prevents basic work activities in any occupation lasting at least 60 days from the date of application but less than 12 months can receive up to six months of GA financial benefits in a rolling 12 month period. Clients are limited to a total of 12 months of financial assistance within a rolling 60-month period.

(b) A client with a long term impairment that prevents basic work activities in any occupation and the impairment is expected to last 12 months or more, can receive a total of 12 months of GA financial benefits in a rolling 60 month period.

(2) There are no exceptions or extensions to the time limit.

(3) Advanced written notice for termination of GA financial assistance due to time limits is not required.

KEY: general assistance
November 1, 2013 35A-3-401
Notice of Continuation September 8, 2010 35A-3-402

R986. Workforce Services, Employment Development.
R986-600. Workforce Investment Act.
R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act, (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the additional penalty under R986-100-118 do not apply. Although a WIA applicant must complete an application as provided in R986-100-111, not all of the information requested in that rule is necessary for WIA applicants.

R986-600-602. Workforce Investment Act (WIA).

(1) The goal of WIA is to increase a client's occupational skills, employment, retention and earnings; to decrease welfare dependency; and to improve the quality of the workforce and national productivity.

(2) WIA is for clients who need assistance finding employment to achieve self-sufficiency.

(3) Services are available for the following groups: adults, dislocated workers, and youth.

R986-600-603. Youth Services.

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have one or more barriers including those which interfere with the ability to complete an educational program or to secure and hold employment.

(3) Services to youth include eligibility determination, assessment, employment planning. The Department may provide youth services or the services may be provided under contract as determined by competitive bid.

(4) Youth may be referred to appropriate community resources based on need.

(5) Services include educational achievement services, employment services, supportive services, and follow-up services.

(6) An incentive may be paid to provide recognition of achievement to eligible youth.

R986-600-604. Adults, Youth, and Dislocated Workers.

The Department offers three levels of service for adults, youth and dislocated workers:

(1) core services;
(2) intensive services and
(3) training services.

R986-600-605. Core Services.

Core services include;

(1) registration for services;
(2) providing the following informational resources:
(a) outreach, intake, and orientation to, and information about, available services, including resource and referral services;
(b) local, regional and national labor market information including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations.
(c) performance measures with respect to the one-stop delivery system;
(3) job development;
(4) rapid response services;
(5) bonding;
(6) assessment of skill levels, aptitudes, abilities, and supportive service needs;
(7) job search and placement assistance, and where appropriate, career counseling and workshops;
(8) follow-up services which will be provided for a minimum of 12 months after active participation ends for all youth. If requested, follow-up services will also be provided for a minimum of 12 months after the first day of unsubsidized employment to adults and dislocated workers who have been placed in unsubsidized employment and,
(9) determining if a client is eligible for, and assistance in, applying for: WIA funded programs, unemployment insurance benefits, financial aid assistance available for training and educational programs not funded under WIA, food stamps, other supportive services such as child care, medical services, and transportation.

R986-600-606. Intensive Services.

(1) Intensive services for adults, dislocated workers and youth consist of:
(a) an assessment as provided in R986-600-620;
(b) development of an employment plan as provided in R986-600-621;
(c) case management, career counseling and career planning;
(d) basic education;
(e) in depth testing and formal assessment;
(f) supportive services;
(g) unpaid internships;
(h) employment internship opportunities; and
(i) follow up services.

(2) Additional intensive services available to youth include:
(a) leadership development;
(b) mentoring;
(c) comprehensive guidance and counseling;
(d) alternative school; and
(e) summer youth employment internship opportunities.

R986-600-607. Training Services.

Training services include employment related education and work site learning.

R986-600-608. Eligibility Requirements, General Definition.

(1) Core services are available to all clients. There are no eligibility requirements for core services offered by the Department.

(2) Eligibility requirements for intensive and training services must be determined before an adult, youth, or dislocated worker can receive services. There are different eligibility criteria for low-income youth services (ages 14-21), adults (18 and over) and dislocated workers. If a client is eligible for services in more than one category, the Department or youth contract provider will determine the most appropriate program or programs for the client.

(3) A client is required to sign and date the training program agreement for the program in which he or she is enrolled.

R986-600-609. Citizenship and Employment Authorization

Requirements.

A client seeking intensive or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees, parolees and other immigrants authorized by the U.S. Attorney General to work in the US.

R986-600-610. Selective Service Registration Requirements.

Male applicants and recipients who are 18 and older must be in compliance with Selective Service registration requirements to receive intensive or training services.

R986-600-611. Factors Used for Determining Priority.

(1) In the event WIA Adult funds are limited, priority will be given to recipients of public assistance and other low income clients for intensive and training services. Other criteria may be applied if funding dictates as determined by the State Workforce Investment Board (SWIB) or the Department.

(2) In the event WIA Youth funds are limited, priority will be given to clients who have two or more barriers as determined by the SWIB.

(3) Veterans and covered persons, as determined by federal law, will receive priority over non-veterans.

R986-600-612. Eligibility for Intensive Services.

(1) Intensive services are available to adults who meet self sufficiency requirements. Those services are available to adults who:

(a) are unemployed, receive at least one core service, and are determined by the Department to be in need of more intensive services to obtain employment; or

(b) are employed, receive at least one core service, and are determined by the Department to be in need of more intensive services to obtain employment that leads to self-sufficiency. Self-sufficiency for WIA Adult is defined as 100% of the Lower Living Standard Income Level (LLSIL) for the specified family size.

(2) Intensive services are available to dislocated workers who are:

(a) unemployed, received at least one core service, and are determined by the Department to be in need of more intensive services to obtain employment; or

(b) employed, received at least one core service, and are determined by the Department to be in need of more intensive services to obtain employment that leads to self-sufficiency. Self-sufficiency for WIA Dislocated Worker is defined as 80% of the client's layoff wage.

R986-600-613. Income Eligibility.

(1) Dislocated workers do not need to meet income eligibility requirements.

(2) Applicants for youth and adult programs must meet income eligibility requirements.

(3) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client;

(a) is receiving, has received, or has been determined eligible to receive food stamps at any time during the six months prior to the application date. This does not apply if the client only received expedited food stamps;

(b) is currently receiving financial assistance from the Department or TANF funds from another state;

(c) is homeless;

(d) is currently receiving SSI; or

(e) is in foster care.

(4) If a client is not eligible under paragraphs (1) or (2) above, the client must meet the low income eligibility guidelines in this rule.

(5) Up to 5% of the youth clients served do not need to meet the income eligibility requirements but must have barriers as determined by the Department. A list of current, eligible barriers is available at the Department.

R986-600-614. How to Determine Who Is Included in the Family.

(1) Family size must be determined to establish income eligibility for adult and youth services. Family size is determined by counting the maximum number of family members in the residence during the six months prior to the date of application, not including the current month. Family members included in the income determination:

(a) a husband and wife and dependent children age 21 and under;

(b) parent(s)or legal guardian(s) and dependent children age 21 and under;

(c) a husband and wife, if there are no dependent children, and

(d) two people living in a single residence who are not married but have children in common.

(2) A "family" is generally described as two or more persons related by blood, marriage or decree of court, living in a single residence. "Living in a single residence" includes family members residing elsewhere on a voluntary, temporary basis, such as attending school or visiting relatives. It does not include involuntary temporary residence elsewhere, such as incarceration, or court-ordered placement outside the home.

(3) A client can be considered a "family" of one, if the client is living alone or with a family member and has a disability that substantially limits one or more major life activities.

(4) The income of the parent or guardian is not counted for a client:

(a) who is between 18 and 21 years of age who states he or she has not been reliant on his or her parent or guardian's income for the six months prior to the date of application not including the current month, or

(b) who is age 22 or older living with his or her parents and applying on his or her own behalf.

R986-600-615. Assets.

Assets are not counted when determining eligibility for WIA services but will be considered in determining whether the client has a need for WIA funding.

R986-600-616. Countable Income.

(1) Countable income is total gross income from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

(a) gross wages and salaries including severance pay and payment of accrued vacation leave;

(b) net receipts from self-employment, including farming;

(c) pensions and retirement income including railroad and military retirement;

(d) strike benefits from union funds;

(e) workers' compensation benefits;

(f) alimony;

(g) any insurance, annuity, or disability, payments other than SSI or veterans disability,

(h) merit-based scholarships, fellowships, and assistantships;

(i) dividends;

(j) interest;

(k) net rental income;

(l) net royalties, including tribal payments from casino royalties;

(m) periodic receipts from estates or trusts;

(n) net gambling or lottery winnings;
(o) tribal payments;
(p) disaster relief employment wages;
(q) on the job training wages reimbursed by the Department;
(r) Social Security Retirement Benefits and Social Security Disability Income which does not include old-age retirement or SSI; and
(s) all training stipends not listed in R986-600-616(2) as excludable income.
(2) Excludable Income. Income that is not counted in determining eligibility:
(a) cash payments under a Federal, state or local public assistance program, including FEP, FEPTP, GA, RRP payment, or EA,
(b) SSI, Old-Age Retirement Benefits, and Survivor's Benefits paid by the Social Security Administration;
(c) payments received from any governmental entity for adoption assistance,
(d) child support;
(e) unemployment compensation;
(f) capital gains;
(g) veterans disability payments other than retirement;
(h) educational financial assistance including Pell grants, work-study and needs-based scholarship assistance;
(i) foster care payments,
(j) tax refunds,
(k) gifts,
(l) loans,
(m) lump-sum inheritances,
(n) one-time insurance payments or compensation for injury,
(o) earned income credit from the IRS,
(p) military service member income, including military pay, military allowances and stipends and military reserve pay;
(q) reparation payments, including German reparation payments, Radiation Exposure Compensation Act payments, and Black Lung Compensation payments;
(r) guardianship subsidies as paid by a governmental entity;
(s) employment internship opportunity wages reimbursed to the employer by the Department;
(t) stipends received from VISTA, Peace Corps, Foster Grandparents Program, Retired Senior Volunteer Program, Youth Works, Americorps, and Job Corp;
(u) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, federal noncash benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance; and
(v) other amounts specifically excluded by federal statute.

R986-600-617. How to Calculate Income.
(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the six months prior to the application date is counted. If necessary, the Department can make a year-to-date estimate based on available records.
(2) The family is income eligible if the annual income meets the higher of:
(a) the poverty line as determined by the U. S. Department of Human Services, or
(b) 70% of the LLSIL as determined by the U. S. Department of Labor and available at the Department of Workforce Services.

R986-600-618. Dislocated Worker.
(1) A dislocated worker is a client who meets one of the following criteria:
(a)(i) has been laid off, and
(A) is eligible for or has exhausted unemployment compensation entitlement, or
(B) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and
(ii) is unlikely to return to the client's previous industry or occupation. 'Unlikely to return' means the client lacks the skills to re-enter the industry or occupation, or declares that he or she will not return to that industry or occupation.
(b) has received a notice of layoff;.
(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the client resides or because of natural disasters;
(d) Is a displaced homemaker. A WIA displaced homemaker is a client who has been providing unpaid services to family members in the home and who:
(i) has been dependent on the income of another family member but is no longer supported by that income; and
(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment;
(e) was laid off from military service and
(i) is eligible for or has exhausted unemployment compensation entitlement,
(ii) is unlikely to return to the previous industry or occupation, and
(iii) was discharged from the military service under conditions other than dishonorable; or
(f) is defined by the Department of Veteran Affairs as a covered person who left employment in order to relocate because of an assignment change of the military service member, and
(i) is eligible for or has exhausted unemployment compensation entitlement, or
(ii) has been employed for a duration sufficient to demonstrate attachment to the workforce but is not eligible for unemployment compensation due to insufficient earnings or having performed services not covered for unemployment compensation, and
(iii) is unlikely to return to the client's previous industry or occupations.
(2) The displacement must be no more than 24 months prior to the date of application.
(3) There are no income or asset requirements for dislocated worker eligibility.
(4) If the Department is providing services under a National Reserve Discretionary Grant, additional eligibility requirements must be met.

R986-600-619. Participation Requirements.
Payment of any and all financial assistance, intensive and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

R986-600-620. Participation in Obtaining an Assessment.
(1) When the Department or youth contract provider determines that a client has a need for intensive services, an employment counselor/case worker will be assigned to assess the needs of the client.
(2) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-600-621. Requirements of an Employment Plan.

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan.

(2) The goal of the employment plan is obtaining employment.

(3) An employment plan consists of activities designed to help a client become employed.

(4) The employment plan may require that the client:

(a) search for employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the state Office of Rehabilitation.

(5) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(6) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(7) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(8) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

R986-600-622. Additional Requirements of an Employment Plan for Youth.

(1) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(2) The goal of the youth program is:

(a) placement in employment or postsecondary education;

(b) attainment of a degree or certificate; and/or

(c) literacy and numeracy gains for out-of-school youth who are basic skill deficient.

R986-600-623. Intensive and Training Services as Part of an Employment Plan.

(1) A client's participation in training services beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported when the client meets appropriateness as provided in R986-600-624.

(3) Additional payments and/or services are allowable under certain circumstances based on individual need provided they are necessary and appropriate to enable the client to participate in activities authorized under WIA.

R986-600-624. Appropriateness for Training Services.

(1) To be eligible for training services, the client must have:

(a) met the eligibility requirements for intensive services as detailed in this R986-600-12;

(b) met the funding priority requirements for intensive services as listed in R986-600-611;

(c) received at least one intensive service as listed in R986-600-606; and

(d) be deemed by the Department as appropriate for training services. To be deemed appropriate, the client must:

(i) have been determined by the Department to be in need of training services,

(ii) have the skills and qualifications to successfully complete the selected training program,

(iii) select a program of training that is directly linked to employment opportunities in the area in which they plan to work, and

(iv) be unable to obtain grant assistance from other sources to pay the costs of such training or the other grant assistance is pending. If the client's PELL grant is pending when training services are provided, and later the PELL grant is awarded, the client must reimburse the Department for those training costs.

(2) A client who does not meet the requirements listed in subsection (1) of this section will be denied training services by the Department.

R986-600-625. Funding.

(1) When a client is approved for intensive or training services, the Department will estimate the anticipated cost to the Department associated with those services and reserve that amount for accounting purposes. This amount may be revised and/or rescinded by the Department at any time without prior notice to the client.

(2) The Department issues an electronic benefit transfer card (card) to each eligible intensive and/or training service client to pay for training, supportive services, and incentives.

(3) The client must prove that all funds received from the Department were spent as intended. Proof may require receipts. If a client is found to have been ineligible for funds, made unauthorized use of Department funds, or cannot prove how those funds were spent, the client will be responsible for repayment of the overpayment.

(4) Amounts remaining on the card after 120 days of inactivity are subject to expungement.

R986-600-626. The Right to Appeal a Denial of Services.

If an applicant or a client who is currently receiving services is denied services the client or applicant can request a hearing as provided in Rules R986-100-123 through R986-100-135.

R986-600-651. Definitions.

(1) The State Council on Workforce Services is referred to in these rules as the State Workforce Investment Board (SWIB).

(2) "Eligible Provider" means an occupational skills training provider eligible to receive funds for training adults and dislocated workers authorized under WIA and approved by the SWIB. Basic education providers that are eligible to receive funds are approved by the Department.

R986-600-652. Determining Eligibility for Training Providers.

(1) Training providers are automatically eligible if they complete an application and are either:

(a) a postsecondary educational institution that:

(i) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(ii) provides a program that leads to an associate degree,

baccalaureate degree, or certificate; or

(b) is an entity that provides programs under the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.

(2) All other training providers must submit the following information:

(a) all names under which the provider operates or is known, the mailing address, physical address, federal tax identification number, telephone number, and email address (if available) of the training facility and the number of years the provider has been in business as a school;

(b) a copy of the provider's student grievance procedure;

(c) the name of each program for which approval is requested;

(d) the percentage of all participants who complete each program, if available;

(e) the percentage of all participants in each program who obtained unsubsidized employment, if available;

(f) average placement wage of all participants in each program, if available;

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

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

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

(iii) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity identified in subparagraph (2)(g)(ii) of this section; and

(iv) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency identified in subparagraph (2)(g)(ii) of this section, or have earned the accreditation and/or certification from the appropriate entity from subparagraph (2)(g)(ii) of this section to teach and/or practice in the field for which the students are being prepared;

(h) program costs including tuition and fees;

(i) documentation showing the provider has registered with the Utah Division of Consumer Protection, if required by UCA Title 13 Chapter 34. Governmental agencies are exempt and do not need to provide additional documentation but all other providers that are exempt from registration with the Utah Division of Consumer Protection must also submit documentation of exempt status with the Utah Division of Consumer Protection;

(j) a copy of the provder's refund policy; and

(k) any other information, documentation or verification requested by the Department.

(3) Applications from providers covered under subsection 2 of this section must be sent to the Department. The Department recommends approval decisions to the SWIB which takes the final action on each application.

(4) Providers contracting with individuals to conduct the training will only be approved if the individual conducting the training is under contract as an independent contractor of the provider and being paid by 1099.

(5) All providers must be in business as a school for a minimum of one year before applying to become a training provider.

(6) All providers must agree to abide by the terms of the application filed with the Department.

(7) The Department will notify a provider in writing or by email when a final decision has been made concerning the provider's eligibility.

(8) A list of eligible providers, including the provider's program performance, if available, and cost information will be published on the Department's Internet site.

(9) Once a provider has been approved, the Department may establish a review date for that provider and notify the provider by email of the review date. The Department will determine at the time of the review, if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(10) Providers must retain participant program records for three years from the date the participant completes the program.

(11) A provider who is not on the Department's approved provider list is not eligible for receipt of WIA funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department;

(b) has committed fraud or violated applicable state or federal law;

(c) intentionally supplies inaccurate student or program performance information;

(d) does not provide services in a professional and timely manner, as determined by the Department; or

(e) has lost approval, accreditation, licensing, or certification from any of the following:

(i) Utah Division of Consumer Protection,

(ii) USOE,

(iii) Northwest Association of Accredited Schools, or

(iv) any other required approval, accrediting, licensing, or certification body.

(f) fails to complete the review process.

(12) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations;

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department; or

(iv) a provider removed for supplying inaccurate student or program performance information will be suspended for two years.

R986-600-653. Distance Learning Providers.

(1) Distance learning is training that is made possible due to advances in computer technology. Using an online computer connection, distance learning can establish a setting for students and instructors where lessons are assigned, completed, and returned, and discussions can be held online.

(2) Distance learning can only be approved when it is a part of a curriculum that:
(a) leads to the completion of a training program;
(b) requires students to interact with instructors;
(c) requires students to take periodic tests.

R986-600-654. Basic Education Training Provider.
(1) Basic education funds can only be provided to training providers approved by the Department.
(2) This section applies to basic education providers receiving funds from the Department including TANF funds under R986-200.

R986-600-655. Types of Basic Education Training Providers and Approval Requirements.
(1) Public schools governed by the Utah State Office of Education (USOE) must complete and submit Application "A" to the Department.
(2) Individuals offering youth tutoring personally, and not as an employee of another business or school, must be over 18 years of age, submit Application "B" and provide all of the following;
(a) a current BCI background check results for Utah, from the Utah Department of Public Safety, paid for by the individual. The BCI report cannot contain:
(i) any matters involving an alleged sexual offense;
(ii) any matters involving an alleged felony or class A misdemeanor drug offense; or
(iii) any matters involving an alleged offense against the person under Utah State Code Title 76 Chapter 5, Offenses Against the Person.
(b) a resume with tutoring-related work history or subject matter knowledge, and
(c) an approved grievance procedure for clients to use in making complaints.
(3) All other providers must submit Application "C" and;
(a) have been in business as a school in Utah for at least one year;
(b) meet all state and local licensing requirements;
(c) submit a current Utah Business License showing at least one year in business, and
(d) submit an approved grievance procedure for clients to use in making complaints.
(e) ESL training providers must also submit documentation of registration as a Postsecondary Proprietary School with the Utah Division of Consumer Protection or show an exemption from such registration, and
(f) Providers offering high school credit must also provide documentation of accreditation through Utah State Office of Education and Northwest Association of Accredited Schools.
(4) Training providers submitting Application "B" or "C" must provide the following information for each training program for which the provider is seeking approval:
(a) program completion rates for all individuals enrolled if available;
(b) the type of certification students completing the program will obtain if available;
(c) the percentage rate of certification attained by program graduates, if available; and
(d) program costs including tuition, fees and refund policy.
(5) A training provider approved under R986-600-652 can be approved for its basic education curriculum upon submission and approval of the information required in subsection (3) and (4) of this section. However, public schools governed by Title IV of the Higher Education Act of 1965 (20 USCA 1070 et seq.) or the Utah State Office of Education (USOE) approved as providers under R986-600-652 do not need to submit the information required in subsection (3) or (4) of this section.

R986-600-656. The Right to a Hearing and How to Request a Hearing.
(1) Training providers will be notified in writing, which may be by email of a decision to deny an application for approval as a basic education training provider or a decision to revoke prior approval. The notice will inform the provider of its right to file a written appeal, where the appeal should be sent, and the deadline for filing an appeal.
(2) If the SWIB made the decision being appealed, the hearing request must be made in writing to the SWIB, which will conduct the hearing at the next regularly scheduled meeting. The SWIB's decision on the provider's eligibility will be final.
(3) If the Department made the determination to deny eligibility or to remove the provider, the written hearing request must be made to the Department and a hearing will be held in accordance with rule R986-100-124 through R986-100-132. Any appeal of the decision of the ALJ must be made to the SWIB. The SWIB's decision will be final.

R986-600-657. Monitoring for Compliance of Equal Opportunity and Nondiscrimination.
(1) The Department monitors service providers for compliance with the equal opportunity and nondiscrimination requirements of WIA. This includes compliance with all applicable laws, regulations, contract provisions, corrective actions, and remedial actions.
(2) Each service provider's compliance will be reviewed annually. The review can be either an on-site review or a data review.

R986-600-658. Noncompliance.
(1) In the event the Department identifies specific instances of noncompliance with federal discrimination laws, the Department will;
(a) notify the service provider in writing of the finding(s) of noncompliance and the corrective action required to ensure compliance;
(b) establish a corrective action plan;
(c) notify the provider of the time lines for the completion of the plan; and
(d) ensure compliance with the corrective action plan.
(2) For training providers, the corrective action plan will provide that the training provider agree to stop all prohibited practices in order to remain eligible for WIA funding.

R986-600-659. Sanctions for Noncompliance and Right to Appeal.
(1) The Department may impose sanctions against a provider for failure to comply with federal nondiscrimination laws or required corrective actions.
(2) If the Department finds that a provider has not taken the required corrective action in the specified time limits the Department will issue a notice of final action informing the service provider of the Department's intent to;
(a) discontinue referral of participants to the provider,
(b) cancel the contract with the provider,
(c) make other changes deemed necessary to secure compliance, and/or
(d) refer the matter to another governmental entity.
(3) The service provider may appeal the decision of the Department by filing an appeal in writing within 30 days of the date of the notice of final action to: The Director, Civil Rights Center, US Department of Labor, 200 Constitution Ave NW, Room N4123, Washington DC, 20210.

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