

R23. Administrative Services, Facilities Construction and Management.**R23-3. Planning and Programming for Capital Projects.****R23-3-1. Purpose and Authority.**

(1) This rule establishes policies and procedures for the authorization, funding, and development of programs for capital development and capital improvement projects and the use and administration of the Planning Fund.

(2) The Board's authority to administer the planning process for state facilities is contained in Section 63A-5-103.

(3) The statutes governing the Planning Fund are contained in Section 63A-5-211.

(4) The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(1).

R23-3-2. Definitions.

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

(2) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(3) "Capital Development" is defined in Section 63A-5-104.

(4) "Capital Improvement" is defined in Section 63A-5-104.

(5) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

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

(7) "Planning Fund" means the revolving fund created pursuant to Section 63A-5-211 for the purposes outlined therein.

(8) "Program" means a document containing a detailed description of the scope, the required areas and their relationships, and the estimated cost of a construction project.

(a) "Program" typically refers to an architectural program but, as used in this rule, the term "program" includes studies that approximate an architectural program in purpose and detail.

(b) "Program" does not mean feasibility studies, building evaluations, master plans, or general project descriptions prepared for purposes of soliciting funding through donations or grants.

R23-3-3. When Programs Are Required.

(1) For capital development projects, a program must be developed before the design may begin unless the Director determines that a program is not needed for that specific project. Examples of capital development projects that may not require a program include land purchases, building purchases requiring little or no remodeling, and projects repeating a previously used design.

(2) For capital improvement projects, the Director shall determine whether the nature of the project requires that a program be prepared.

R23-3-4. Authorization of Programs.

(1) The initiation of a program for a capital development project must be approved by the Legislature or the Board if it is anticipated that state funds will be requested for the design or construction of the project.

(2) When requesting Board approval, the agency shall justify the need for initiating the programming process at that point in time and also address the level of support for funding the project soon after the program will be completed.

R23-3-5. Funding of Programs.

Programs may be funded from one of the following sources.

(1) Funds appropriated for that purpose by the Legislature.

(2) Funds provided by the agency.

(a) This would typically be the funding source for the development of programs before the Legislature funds the project.

(b) Funds advanced by agencies for programming costs may be included in the project budget request but no assurance can be given that project funds will be available to reimburse the agency.

(c) Agencies that advance funds for programming that would otherwise lapse may not be reimbursed in a subsequent fiscal year.

(3) If an agency is able to demonstrate to the Board that there is no other funding source for programming for a project that is likely to be funded in the upcoming legislative session, it may request to borrow funds from the Planning Fund as provided for in Section R23-3-8.

R23-3-6. Administration of Programming.

(1) The development of programs shall be administered by the Division in cooperation with the requesting agency unless the Director authorizes the requesting agency to administer the programming.

(2) This Section R23-3-6 does not apply to projects that are exempt from the Division's administration pursuant to Subsection 63A-5-206(3).

R23-3-7. Restrictions of Programming Firm.

(1) Except as provided in Subsections 2 and 3, neither a firm that prepares a program for a project nor its subconsultants may be prohibited from being considered for selection as the lead design firm or a member of the design team for that project unless the procurement documents for the selection of the firm for the programming services or the contract with the firm for the programming services contains such a restriction.

(2) In general, a firm that prepares a program for a project that is expected to be developed using the design-build method described in Section R23-1-45 may not be a member of the design-build team for that project. In order for this restriction to take effect, this restriction must be stated in the procurement documents for the selection of the firm for the programming services or the contract with the firm for the programming services. This restriction shall not apply to a subconsultant of the programming firm unless the procurement documents contain such a restriction.

(3) A restriction, as provided for in this Section may be waived if the Director makes a written determination that it is in the best interests of the State to waive this requirement.

R23-3-8. Use and Reimbursement of Planning Fund.

(1) The Planning Fund may be used for the purposes stated in Section 63A-5-211 including the development of:

(a) facility master plans;

(b) programs; and

(c) building evaluations or studies to determine the feasibility, scope and cost of capital development and capital improvement requests.

(2) Expenditures from the Planning Fund must be approved by the Director.

(3) Expenditures in excess of \$25,000 for a single planning or programming purpose must also be approved in advance by the Board.

(4) The Planning Fund shall be reimbursed from the next funded or authorized project for that agency that is related to the purposes for which the expenditure was made from the Planning Fund.

(5) The Division shall report changes in the status of the Planning Fund to the Board.

R23-3-9. Development and Approval of Master Plans.

(1) For each major campus of state-owned buildings, the agency with primary responsibility for operations occurring at the campus shall, in cooperation with the Division, develop and maintain a master plan that reflects the current and projected development of the campus.

(2) The purpose of the master plan is to encourage long term planning and to guide future development.

(3) Master plans for campuses and facilities not covered by Subsection (1) may be developed upon the request of the Board or when the Division and the agency determine that a master plan is necessary or appropriate.

(4) The initial master plan for a campus, and any substantial modifications thereafter, shall be presented to the Board for approval.

KEY: planning, public buildings, design, procurement

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63A-5-103

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63A-5-211

R23. Administrative Services, Facilities Construction and Management.**R23-29. Across the Board Delegation.****R23-29-1. Purpose.**

This rule provides the procedures for delegation of construction projects to the University of Utah and Utah State University.

R23-29-2. Authority.

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

R23-29-3. Authority and Extent of Delegation.

(1) As permitted by subsection 63A-5-206(3)(a)(ii)(B), authority is delegated to the University of Utah and Utah State University, "the Institutions," to exercise direct supervision over the design and construction of all alterations, repairs, and improvements to existing facilities on their respective campuses up to the dollar amounts stated below.

(2) As permitted by subsection 63A-5-206(5)(c), the Board expresses its intent to authorize the delegation of the design and construction of new facilities on a project-by-project basis up to the dollar amounts stated below. New facilities means the addition of new space costing more than \$100,000.

(3) This delegation is granted to Utah State University for projects having a total budget for design and construction of less than \$2,000,000.

(4)(a) This delegation is granted to the University of Utah for the design and construction of all alteration, repair and improvement projects unless the Utah State Building Board, after consultation with the University of Utah, determines that the project should be managed by DFCM.

(b) For projects having a total budget for design and construction greater than \$5,000,000, the University of Utah shall provide the following in writing to the Director of DFCM prior to initiating a project under this delegation:

(i) a notice of the University's desire to manage the project under this delegation authorization; and

(ii) a project management and staffing plan for the project.

(5) Projects may not be subdivided into multiple projects in order to arrive at projects which are small enough to meet the dollar limits for delegation.

(6) Substantial benefit and justification must be demonstrated before consideration will be given to any delegation requests from these institutions for projects larger than the above limits.

(7) When applicable, this delegation authority shall not take effect for a specific project until the following requirements are met:

(a) Legislative authorization for design and construction has been obtained for the construction of all new space costing more than \$100,000.

(b) The requirements of section R23-29-17 regarding the completion of a DFCM administered architectural program have been satisfied.

R23-29-4. Fiduciary Control.

The Institutions shall assume fiduciary control over project finances and shall assume all responsibility for project budgets and expenditures. The Institutions shall be responsible for ensuring compliance with all applicable laws, rules, and building codes.

R23-29-5. Building Official.

Each Institution is designated as the Building Official for projects delegated. Institutions shall comply with all requirements of the Uniform Building Standards Act, Chapter

58-56. If an Institution does not have the internal staff to comply with this requirement, it must contract for the appropriate service.

R23-29-6. Procurement.

Each Institution shall comply with the state Procurement Code, Chapter 63G-6-102, and its procurement rules. Any aspect of the Institution's rules for the procurement of architect/engineer services or construction which is less restrictive than the procurement rules adopted by the Building Board must be approved by the Board.

R23-29-7. Contract Documents.

The Institutions shall utilize substantially the same standard Contract Documents as used by DFCM. Any substantive differences must be approved by the Board.

R23-29-8. Transfer of State Funds.

(1) To the extent possible, all state funds appropriated to DFCM for projects delegated to the Institutions shall be transferred to the respective Institution immediately upon their receipt by DFCM.

(2) State funds provided from state issued bonds, or from other sources containing similar restrictions, shall be transferred to the Institutions on a reimbursement basis. Such reimbursements shall be made on a monthly basis upon receipt of a reimbursement request from the Institution detailing the expenditures made on each project.

(3) Upon completion of a project, any remaining statewide funds like roofing, paving) shall remain with the Institution to be used for a similar need on its campus. This activity shall be noted in the monthly report to the Building Board.

R23-29-9. Contingencies.

The Institutions shall be subject to the same laws and rules regarding contingency funds as is DFCM. The only difference is that contingency funds for delegated projects shall be segregated from the contingency funds held by DFCM for non-delegated projects.

R23-29-10. Space Standards.

The Institutions shall comply with the space standards as adopted by the Building Board. Any significant deviations from these standards shall be reported to the Board.

R23-29-11. Design Criteria.

The Institutions shall utilize the Design Criteria adopted by the Building Board. These may be supplemented by special requirements that are unique to each Institution. Any significant departures from the Board approved Design Criteria shall be reported to the Board.

R23-29-12. Value Engineering.

The Institutions shall comply with state law and Rule R23-6 regarding the value engineering and life cycle costing of facilities. DFCM may assist each Institution as requested in the performance of these reviews.

R23-29-13. Record Drawings.

At the completion of each delegated project, each Institution shall submit a copy of all record drawings to DFCM.

R23-29-14. Statutory Requirements on DFCM Projects.

(1) In addition to those noted elsewhere in this rule, the Institutions shall comply with the following statutory requirements which have been placed on DFCM projects.

(a) Subsection 63A-5-205(3) relating to the investment of contractor's retention.

(b) Subsection 63A-5-206(3)(c)(ii) relating to the

notification to local governments regarding certain types of projects.

(c) The Percent-for-Art program as provided in Sections 63A-5-206 and 63A-5-209, and Title 9, Chapter 6, Part 4.

(d) Subsection 63A-5-206(7) relating to the reporting of completed projects to the Office of the Legislative Fiscal Analyst.

(e) Section 63A-5-208 relating to the listing and changing of subcontractors and the disclosure of subcontractor bids.

(2) The Institutions and DFCM shall strive to avoid any confusion which could result from inconsistent procedures and requirements being used by each entity.

R23-29-15. Reporting.

(1) Each Institution shall report monthly to the Building Board on the status of its delegated projects.

(2) The following reports shall be presented in a similar format and content as that presented by DFCM on projects and funds it is administering.

- (a) Architect/Engineer Contracts Awarded
- (b) Construction Contracts Awarded
- (c) Contingency Funds
- (d) Statewide Funds
- (e) Status Report for Projects in Construction

(3) The above reports shall be submitted to DFCM at least ten calendar days prior to each Board meeting to be included in packet sent to the Building Board.

(4) A copy of the above reports shall be submitted to the Office of the Commissioner of Higher Education for distribution to the Board of Regents at the same time it is submitted to DFCM.

R23-29-16. Capital Budget Requests.

The Institutions shall continue to submit all capital budget requests to DFCM and the Building Board for review, prioritization, and recommendation to the Governor and the Legislature.

R23-29-17. Programming.

(1) For projects within the definition of "Capital Developments" as defined in subsection 63A-5-103(3)(a), which will be funded wholly or in part by state funds for either construction or operations and maintenance, a facility program shall be developed under the supervision of DFCM unless this requirement is waived by the Building Board.

(2) For projects which are within the delegation limits set forth in section R23-29-1 and which do not meet the requirements of subsection R23-29-17(1), the Institutions may determine the extent of programming or scope definition required and supervise the development of these documents. No DFCM review or approval will be required.

R23-29-18. Sharing of Resources.

DFCM and the Institutions shall strive to share personnel resources where resources exist at one entity and not at another. The Institutions and DFCM shall enter into a separate agreement to accomplish this sharing of resources.

R23-29-19. Staffing Levels.

(1) The Institutions have represented that they have adequate existing resources to assume the responsibilities given to them under this delegation.

(2) The Institutions shall not increase the staffing levels related to the administration of capital projects beyond the levels represented in seeking this delegation which was 32 full time staff at the University of Utah and 15 full time staff and 5 F.T.E. of student employees at Utah State University.

R23-29-20. Review of Delegated Projects.

Upon direction of the Building Board, DFCM staff may review the management of delegated projects and report its findings to the Board.

R23-29-21. Authority to Modify Delegation.

The Building Board may modify or repeal the authority delegated under this rule by amending or repealing this rule.

KEY: buildings, delegation*

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63A-5-206

R27. Administrative Services, Fleet Operations.**R27-4. Vehicle Replacement and Expansion of State Fleet.****R27-4-1. Authority.**

(1) This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(d)(v), 63A-9-401(1)(d)(ix), 63A-9-401(1)(d)(x), 63A-9-401(1)(d)(xi) 63A-9-401(1)(d)(xii), 63A-9-401(4)(ii), and 63A-9-401(6) which require the Division of Fleet Operations (DFO) to: coordinate all purchases of state vehicles; make rules establishing requirements for the procurement of state vehicles, whether for the replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles and make rules establishing rate structures for state vehicles.

(a) All agencies exempted from the DFO replacement program shall provide DFO with a complete list of intended vehicle purchases prior to placing the order with the vendor.

(b) DFO shall work with each agency to coordinate vehicle purchases to make sure all applicable mandates, including but not limited to alternative fuel mandates, and safety concerns are met.

(c) DFO shall assist agencies, including agencies exempted from the DFO replacement program, in their efforts to insure that all vehicles in the possession, control, and/or ownership of agencies are entered into the fleet information system.

(2) Pursuant to Subsection 63J-1-306(8)(f)(ii), vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to DFO and, when transferred, become part of the Consolidated Fleet Internal Service Fund.

R27-4-2. Fleet Standards.

(1) Prior to the purchase of replacement and legislatively approved expansion vehicles for each fiscal year, the DFO staff shall, on the basis of input from user agencies, recommend to DFO:

(a) a Standard State Fleet Vehicle (SSFV)

(b) a standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) DFO shall, after reviewing the recommendations made by the DFO staff, determine and establish, for each fiscal year:

(a) a SSFV

(b) the standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet. A standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(3) DFO shall establish lease rates designed to recover, in addition to overhead and variable costs, the capital cost associated with acquiring a standard replacement vehicle for each vehicle class in the fleet.

(4) DFO shall establish replacement cycles according to vehicle type and expected use. The replacement cycle that applies to a particular vehicle supposes that the vehicle will be in service for a specified period of time and will be driven an optimum number of miles within that time. Whichever of the time or mileage criterion is reached first shall result in the vehicle's replacement.

R27-4-3. Delegation of Division Duties.

(1) Pursuant to the provisions of UCA 63A-9-401(6), the Director of DFO, with the approval of the Executive director of the Department of Administrative Services, may delegate motor vehicle procurement and disposal functions to institutions of higher education by contract or other means authorized by law, provided that:

(a) The funding for the procurement of vehicles that are subject to the agreement comes from funding sources other than state appropriations, or the vehicle is procured through the federal surplus property donation program;

(b) Vehicles procured with funding from sources other than state appropriations, or through the federal surplus property donation program shall be designated "do not replace;" and

(c) In the event that the institution of higher education is unable to designate said vehicles as "do not replace," the institution shall warrant that it shall not use state appropriations to procure their respective replacements without legislative approval.

(2) Agreements made pursuant to Section 63A-9-401(6) shall, at a minimum, contain:

(a) a precise definition of each duty or function that is being allowed to be performed; and

(b) a clear description of the standards to be met in performing each duty or function allowed; and

(c) a provision for periodic administrative audits by either the DFO or the Department of Administrative Services; and

(d) a representation by the institution of higher education that the procurement or disposal of the vehicles that are the subject matter of the agreement shall be coordinated with DFO. The institution of higher education shall, at the request of DFO, provide DFO with a list of all conventional fuel and alternative fuel vehicles it anticipates to procure or dispose of in the coming year. Alternative fuel vehicles shall be purchased by the agency or institution of higher education, when necessary, to insure state compliance with federal AFV mandates; and

(e) a representation by the institution of higher education that the purchase price is less than or equal to the state contract price for the make and model being purchased; and in the event that the state contract price is not applicable, that the provisions of Section 63-56-1 shall be complied with; and

(f) a representation that the agreement is subject to the provisions of UCA 63J-1-306, Internal Service Funds - Governance and review; and

(g) a representation by the institution of higher education that it shall enter into DFO's fleet information system all information that would be otherwise required for vehicles owned, leased, operated or in the possession of the institution of higher education; and

(h) a representation by the institution of higher education that it shall follow state surplus rules, policies and procedures on related parties, conflict of interest, vehicle pricing, retention, sales, and negotiations; and

(i) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) An agreement made pursuant to Section 63A-9-401(7) may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement.

R27-4-4. Vehicle Replacement.

(1) All state fleet motor vehicles shall, subject to budgetary constraints, be replaced when the vehicle meets the first of either the mileage or time component of the established replacement cycle criteria.

(2) Prior to the purchase of replacement motor vehicles, DFO shall provide each agency contact with a list identifying all vehicles that are due for replacement, and the Standard State Fleet Vehicle (SSFV) that will be purchased to take the place of each vehicle on the list.

(3) All vehicles replacements will default to a SSFV.

(4) Pursuant to Section 63A-9-401(4)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

(a) Passenger space

- (b) Type of items carried
- (c) Hauling or towing capacity
- (d) Police pursuit capacity
- (e) Off-road capacity
- (f) 4x4 capacity
- (g) Emergency service (police, fire, rescue services) capacity
- (h) Attached equipment capacity (snow plows, winches, etc.)
- (i) Other justifications as approved by the Director of DFO or the director's designee.

(5) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of a motor vehicle with a SSFV.

(6) Agencies may request that state fleet motor vehicles in their possession or control that have a history of excessive repairs, but have not reached either the mileage or time component of the applicable replacement cycle, be replaced. The request to replace motor vehicles with a history of excessive repairs is subject to budgetary constraints and the approval of the Director of DFO or the director's designee.

(7) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of motor vehicles with a history of excessive repairs.

(8) In the event that the replacement vehicle is not delivered to the agency by the vendor, the agency shall have five working days to pick-up the replacement vehicle from DFO, after receiving official notification of its availability. If the vehicles involved are not exchanged within the five-day period, a daily storage fee will be assessed and the agency will be charged the monthly lease fee for both vehicles.

(9) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of replacement vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure compliance with said AFV mandates.

R27-4-5. Fleet Expansion.

(1) Any expansion of the state motor vehicle fleet requires legislative approval.

(2) The agency requesting a vehicle that will result in fleet expansion or that a vehicle currently designated "do not replace" be placed on a replacement cycle, shall be required to provide proof of the requisite legislative approval and funding for the procurement of an expansion vehicle or the placement of a "do not replace" vehicle on a replacement cycle, and any additional features and miscellaneous equipment, before DFO is authorized to purchase the expansion vehicle.

(3) For the purposes of this rule, an agency shall be deemed to have the requisite legislative approval under the following circumstances only:

(a) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by the Appropriations Committee during the general legislative session; or

(b) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by a special session of the legislature convened for the express purpose of approving fleet expansion.

(4) For the purposes of this rule, only the following shall constitute acceptable proof of legislative approval of the requested expansion or placement of a "do not replace" vehicle on a replacement cycle:

(a) A letter, signed by the agency's Chief Financial Officer, citing the specific line item in the appropriations bill providing said authorization; or

(b) Written verification from the agency's analyst in the Governor's Office of Planning and Budget (GOPB) indicating that the request for expansion was authorized and funded by the legislature.

(5) Prior to the purchase of an expansion motor vehicle, DFO shall provide each agency contact with the Standard State Fleet Vehicle (SSFV) that will be purchased.

(6) All expansion vehicles will default to a SSFV.

(7) Pursuant to Section 63A-9-401(4)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

- (a) Passenger space
- (b) Type of items carried
- (c) Hauling or towing capacity
- (d) Police pursuit capacity
- (e) Off-road capacity
- (f) 4x4 capacity
- (g) Emergency service (police, fire, rescue services) capacity
- (h) Attached equipment capacity (snow plows, winches, etc.)
- (i) Other justifications as approved by the Director of DFO or the director's designee.

(8) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the expansion motor vehicle to be a non-SSFV.

(9) Upon receipt of proof of legislative approval of an expansion from the requesting agency, DFO shall provide to the State Division of Finance copies of the proof submitted in order for the Division of Finance to initiate the process for the formal transfer of funds necessary to procure the expansion vehicle(s) from the requesting agency to DFO. In no event shall DFO purchase expansion vehicles for requesting agencies until the Division of Finance has completed the process for the formal transfer of funds.

(10) In the event that the requesting agency receives legislative approval for placing a "do not replace" vehicle on a replacement cycle, the requesting agency shall, in addition to providing DFO with proof of approval and funding, provide the Division of Finance with funds, for transfer to DFO, equal to the amount of depreciation that DFO would have collected for the number of months between the time that the "do not replace" vehicle was put into service and the time that the requesting agency begins paying the applicable monthly lease rate for the replacement cycle chosen. In no event shall DFO purchase a replacement vehicle for the "do not replace" vehicle if the requesting agency fails to provide funds necessary to cover said depreciation costs.

(11) When the expansion vehicle is procured, the vehicle shall be added to the fleet and a replacement cycle established.

(12) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of expansion vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure in compliance with said AFV mandates.

R27-4-6. Vehicle Feature and Miscellaneous Equipment Upgrade.

(1) Additional feature(s) or miscellaneous equipment to be added to the standard replacement vehicle in a given class, as established by DFO after reviewing the recommendations of the DFO staff, that results in an increase in vehicle cost shall be deemed a feature and miscellaneous equipment upgrade. A

feature or miscellaneous equipment upgrade occurs when an agency requests:

(a) That a replacement vehicle contains a non-standard feature. For example, when an agency requests that an otherwise standard replacement vehicle have a diesel rather than a gasoline engine, or that a vehicle contain childproof locks.

(b) The installation of additional miscellaneous equipment not installed by the vehicle manufacturer. For example, when an agency requests that light bars or water tanks be installed on an otherwise standard replacement vehicle.

(2) Requests for feature and miscellaneous equipment upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director, or the appropriate budget or accounting officer.

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle feature and/or miscellaneous equipment upgrades shall be approved when in the judgment of the Director of DFO or the director's designee, the requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a feature and/or miscellaneous equipment upgrade.

(5) Agencies obtaining approval for feature and/or miscellaneous equipment upgrades shall, prior to the purchase of the vehicle, pay in full to DFO, a feature and/or miscellaneous equipment upgrade rate designed to recover the total cost associated with providing the additional feature(s) and/or miscellaneous equipment, unless the requesting agency otherwise negotiates an agreement with DFO for payments to be made in installments, and provided that the terms of the installment agreement do not delay the payment of the general fund debt.

(6) In the event that an agreement providing for the payment of a feature and/or miscellaneous equipment upgrade in installments is reached, the agency shall indemnify and make DFO whole for any losses incurred resulting from damage to, loss or return of the vehicle and/or equipment prior to the receipt of all payment installments by DFO.

R27-4-7. Agency Installation of Miscellaneous Equipment.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may enter into Memoranda of Understanding allowing customer agencies to install miscellaneous equipment on or in state vehicles if:

(a) the agency or institution has the necessary resources and skills to perform the installations; and

(b) the agency or institution has received approval for said miscellaneous equipment as required by R27-4-6.

(2) Each memorandum of understanding for the installation of miscellaneous equipment shall, at a minimum, contain the following:

(a) a provision that monthly lease fees shall be charged to the agency from the date of the agency's receipt of the replacement vehicle as required under R27-4-9(7)(b); and

(b) a provision that said agency shall indemnify and hold DFO harmless for any claims made by a third party that are related to the installation of miscellaneous equipment in or on state vehicles in the agency's possession and/or control; and

(c) a provision that said agency shall indemnify DFO for any damage to state vehicles resulting from installation or de-installation of miscellaneous equipment; and

(d) a provision that agencies with permission to install miscellaneous equipment shall enter into the DFO fleet information system the following information regarding the miscellaneous equipment procured for installation in or on state vehicles, whether the item is held in inventory, currently installed on a vehicle, or sent to surplus;

(i) item description or nomenclature; and

(ii) manufacturer of item; and

(iii) item identification information for ordering purposes; and

(iv) procurement source; and

(v) purchase price of item; and

expected life of item in years; and

(vi) warranty period; and

(vii) serial number;

(viii) initial installation date; and

(ix) current location of item (warehouse, vehicle number); and

(x) anticipated replacement date of item; and

(xi) actual replacement date of item; and

(xii) date item sent to surplus; and SP-1 number.

(e) a provision requiring the agency or institution with permission to install being permitted to install miscellaneous equipment to obtain insurance from the Division of Risk Management in amounts sufficient to protect itself from damage to, or loss of, miscellaneous equipment installed on state vehicles. Agencies or institutions with permission to install miscellaneous equipment shall hold DFO harmless for any damage to, or loss of miscellaneous equipment installed in state vehicles.

(f) a provision that DFO shall provide training and support services for the fleet information system and charge agencies with permission to install miscellaneous equipment a Management Information System (MIS) fee to recover these costs.

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) Agreements permitting agencies or institutions to install miscellaneous equipment in or on state vehicles may be terminated if there is a lack of compliance with the terms of the agreement by the state agency or institution.

R27-4-8. Vehicle Class Differential Upgrade.

(1) For the purposes of this rule, requests for vehicles other than the SSFV established by DFO after reviewing the recommendations of the DFO staff, that results in an increase in vehicle cost shall be deemed a vehicle class differential upgrade. For example, a vehicle class differential upgrade occurs when, regardless of additional features and/or miscellaneous equipment:

(a) The replacement vehicle requested by the agency, although within the same vehicle class as the vehicle being replaced, is not the standard replacement vehicle established by DFO for that class.

(b) The agency requests that a vehicle be replaced with a more expensive vehicle belonging to another class. For example, when an agency requests to have a standard 1/2 ton truck replaced with a standard 3/4 ton truck, or a compact sedan be replaced with a mid-size sedan.

(2) Requests for vehicle class differential upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director or the appropriate budget or accounting officer.

(3) All requests for vehicle class differential upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle class differential upgrades shall be approved only when:

(a) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting the demands of changing operational needs for which the planned replacement vehicle is clearly inadequate or inappropriate;

(b) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting safety, environmental, or health or other special needs for drivers or passengers.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a vehicle class differential upgrade.

(5) Agencies obtaining approval for vehicle class differential upgrade(s) at the end of the applicable replacement cycle shall pay to DFO, in full, prior to the purchase of the vehicle, a vehicle class differential upgrade rate designed to recover the difference in cost between the planned replacement vehicle and the actual replacement vehicle when the replacement vehicle is a more expensive vehicle belonging to the same or another class.

(6) Agencies obtaining approval for vehicle class differential upgrade(s) prior to the end of the current vehicle's replacement cycle shall, prior to the purchase of the replacement vehicle, pay to DFO, in full, an amount equal to the difference in cost between the actual replacement vehicle and the planned replacement vehicle plus the amount of depreciation still owed on the vehicle being replaced, less the salvage value of the vehicle being replaced.

R27-4-9. Cost Recovery.

(1) State vehicles shall be assessed a lease fee designed to recover depreciation costs, and overhead costs, including AFV and MIS fees, and where applicable, the variable costs, associated with each vehicle.

(2) Lease rates are calculated by DFO according to vehicle cost, class, the period of time that the vehicle is expected to be in service, the optimum number of miles that the vehicle is expected to accrue over that period, and the type of lease applicable:

(a) A capital only lease is designed to recover depreciation plus overhead costs, including AFV and MIS fees, only. All variable costs, such as fuel and maintenance, are not included in the lease rate.

(i) Capital only leases are subject to DFO approval; and

(ii) Shall be permitted only when the requesting agency provides proof that its staffing, facilities and other infrastructure costs, and preventive maintenance and repair costs are less than, or equal to those incurred by DFO under the current preventive maintenance and repair services contract.

(iii) DFO shall, upon giving approval for a capital only lease, issue a delegation agreement to each agency.

(b) A full-service lease is designed to recover depreciation and overhead costs, including AFV and MIS fees, as well as all variable costs.

(3) DFO shall review agency motor vehicle utilization on a quarterly basis to identify vehicles in an agency's possession or control that, on the basis of the applicable replacement cycle, are either being under-utilized or over-utilized.

(4) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet motor vehicles in its possession or control.

(5) In the event that a vehicle is turned in for replacement as a result of reaching the optimum mileage allowed under the applicable replacement cycle mileage schedule, prior to the end of the period of time that the vehicle is expected to be in service, a rate containing a shorter replacement cycle period that reflects

actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(6) In the event that a vehicle is turned in for replacement as scheduled, but is not in compliance with optimum mileage allowed under the applicable replacement cycle, a rate containing a longer replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(7) DFO shall begin the monthly billing process when the agency receives the vehicle.

(a) Agencies that choose to keep any vehicle on the list of vehicles recommended for replacement after the receipt of the replacement vehicle, pursuant to the terms of a memorandum of understanding between the leasing agencies and DFO that allows the agency to continue to possess or control an already replaced vehicle, shall continue to pay a monthly lease fee on the vehicle until it is turned over to the Surplus Property Program for resale. Vehicles that are kept after the receipt of the replacement vehicle shall be deemed expansion vehicles for vehicle count report purposes.

(b) Agencies that choose to install miscellaneous equipment to the replacement vehicle, in house, shall be charged a monthly lease fee from date of receipt of the replacement vehicle. If DFO performs the installation, the billing process shall not begin until the agency has received the vehicle from DFO.

R27-4-10. Executive Vehicle Replacement.

(1) Executive Vehicles shall be available to only those with employment positions that have an assigned vehicle as part of a compensation package in accordance with state statute.

(a) Each fiscal year DFO shall establish a standard executive vehicle type rate and purchase price.

(b) Executives may elect to replace their assigned vehicle at the beginning of each elected term, or appointment period, or as deemed necessary for the personal safety and security of the elected or appointed official.

(c) When the executive leaves office, the vehicle shall be sold in accordance with State Surplus Property Program policies and procedures.

(2) Executives shall have the option of choosing a vehicle other than the standard executive vehicle based on the standard executive vehicle purchase price.

(a) The alternative vehicle selection should not exceed the standard executive vehicle purchase price parameter guidelines.

(b) In the event that the agency chooses an alternative a vehicle that exceeds the standard vehicle purchase price guidelines, the agency shall pay for the difference in price between the vehicle requested and the standard executive vehicle purchase price.

R27-4-11. Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles.

(1) This section implements that part of Item 59 of S.B. 1 of the 2002 General Session which requires the Division of Fleet Operations to "create a capitalization credit program that will allow agencies to divest themselves of vehicles without seeing a future capitalization cost if programs require replacement of the vehicle."

(2) In the event that an agency voluntarily surrenders a vehicle to DFO under the capitalization credit program, the agency shall receive a capital credit equal to: the total depreciation collected by DFO on the vehicle (D), plus the estimated salvage value for the vehicle (S), for use towards the purchase of the replacement vehicle.

(3) Prior to the purchase of the replacement vehicle, the surrendering agency shall pay DFO, an amount equal to the difference between the purchase price of the replacement vehicle and amount of the capital credit.

(4) DFO shall, in the event that an agency voluntarily surrenders a vehicle to DFO, hold the vehicle allocation open, or maintain the capital credit for the surrendering agency, for a period not to exceed the remainder of the fiscal year within which the surrender took place, plus an additional five fiscal years.

(5) The surrendering agency's failure to request the return of the vehicle surrendered prior to the end of the period established in R27-4-11(4), above, shall result in the removal of the surrendered vehicle or allotment from the state fleet, the loss of the agency's capital credit, and effect a reduction in state fleet size.

(6) DFO shall not hold vehicle allocations or provide capital credit to an agency when the vehicle that is being surrendered:

(a) has been identified for removal from the state fleet in order to comply with legislatively mandated reductions in state fleet size; or

(b) is identified as a "do not replace" vehicle in the fleet information system; or

(c) is a state vehicle not purchased by DFO; or

(d) is a seasonal vehicle that has already been replaced.

(7) Any agency that fails to request the return of a voluntarily surrendered vehicle prior to the end of the period set forth in R27-4-11(4), above, must comply with the requirements of R27-4-5, Fleet Expansion, to obtain a vehicle to replace the one surrendered.

R27-4-12. Inter-agency Vehicle Reassignment or Reallocation Guidelines.

(1) DFO is responsible for state motor vehicle fleet management, and in the discharge of that responsibility, one of DFO's duties is to insure that the state is able to obtain full utilization of, and the greatest residual value possible for state vehicles.

(2) DFO shall, on a quarterly basis, conduct a review of state fleet motor vehicle utilization to determine whether the vehicles are being utilized in accordance with the mileage requirements contained in the applicable replacement cycles.

(3) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet vehicles in its possession or control.

(4) In conducting the review, DFO shall collect the following information on each state fleet vehicle:

(a) year, make and model;

(b) vehicle identification number (VIN);

(c) actual miles traveled per month;

(d) driver and/or program each vehicle is assigned to;

(e) location of the vehicle;

(f) class code and replacement cycle.

(4) Agencies shall be responsible for verifying the information gathered by DFO.

(5) Actual vehicle utilization shall be compared to the scheduled mileage requirements contained in the applicable replacement cycle, and used to identify vehicles that may be candidates for reassignment or reallocation, reclassification, or elimination.

(6) In the event that intra-agency reassignment or reallocation of vehicles fails to bring vehicles into compliance with applicable replacement cycle mileage schedules within a replacement cycle, DFO may, in the exercise of its state motor vehicle fleet management responsibilities, reassign, reallocate or eliminate the replacement vehicles for vehicles that are chronically out of compliance with applicable replacement cycle mileage requirements to other agencies to ensure that all vehicles in the state fleet are fully utilized.

(7) Agencies required to relinquish vehicles due to a reassignment or reallocation may petition the Executive Director

of the Department of Administrative Services, or the executive director's designee, for a review of the reallocation or reassignment made by DFO. However, vehicles that are the subject matter of petitions for review shall remain with the agencies to which they have been reassigned or reallocated until such time as the Executive Director of the Department of Administrative Services or the executive director's designee renders a decision on the matter.

R27-4-13. Reassignment or Disposal of Underutilized State Vehicles.

(1) After vehicles have been reviewed in accordance with R27-4-12, and chronically underutilized vehicles have been identified, DFO shall initiate the steps necessary to reassign or dispose of the vehicle.

(2) At a minimum, the steps taken by DFO prior to reassignment or disposal must include:

(a) A review of the vehicle's history with the assigned agency;

(b) Review the vehicle history with, and receive direction from, the Executive Director of the Department of Administrative Services, or their designee, regarding the proposed action;

(c) If approved by the Executive Director, give notice to the agency that they have rights per R27-4-4(7) to petition the Executive Director for further review.

(3) If the assigned agency voluntarily turns in the underutilized vehicle, a capital credit shall be established in accordance with R27-4-11.

(4) If the assigned agency disagrees with the action, they may exercise their right to have a review of the proposed action with the Executive Director.

(5) If there is agreement between DFO and the Executive Director, then DFO shall give notice to the agency that it has been given authority to reassign or dispose of the vehicle in question.

(6) DFO shall reassign the vehicle to another fleet location, or begin the process of disposing of the vehicle.

KEY: fleet expansion, vehicle replacement

April 22, 2014

Notice of Continuation January 5, 2012

63A-9-401(1)(a)

63A-9-401(1)(d)(v)

63A-9-401(1)(d)(ix)

63A-9-401(1)(d)(x)

63A-9-401(1)(d)(xi)

63A-9-401(1)(d)(xii)

63A-9-401(4)(ii)

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

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

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

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

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

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

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

(e) All parties agree to the modification.

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

R33-6-102. Changes Clause.

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

"Changes"

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

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

(2) method of shipment or packing; or

(3) place of delivery.

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

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

Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if

asserted after final payment under this contract."

R33-6-103. Stop Work Order Clause.

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

(2) Use of Orders.

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

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

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

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

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

(3) Clause.

"Stop Work Order"

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

(a) cancel the stop work order;

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

(c) terminate the contract.

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

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

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

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

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

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

Variation in Quantity

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

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

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

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

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

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

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

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

R33-6-105. Price Adjustment Clause.

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

Price Adjustment

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

- (1) by agreement on a fixed-price adjustment;
- (2) by unit prices specified in the contract;
- (3) in another manner as the parties may mutually agree;

or

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

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

R33-6-106. Termination for Default Clause.

Termination For Default

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

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

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

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

Upon request of the contractor, the procurement officer

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

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

R33-6-107. Liquidated Damages Clause.

Liquidated Damages

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

R33-6-108. Termination for Convenience Clause.

Termination For Convenience

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

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

Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R33. Administrative Services, Purchasing and General Services.**R33-7. Cost Principles.****R33-7-101. Applicability of Cost Principles.**

(1) Application. This subpart contains cost principles and procedures to be used as guidance in:

(a) establishment of contract cost estimates and prices under contracts made by competitive sealed proposals where the award may not be based on adequate price competition, sole source procurement, contracts for certain services, or architect-engineer services;

(b) establishment of price adjustments for contract changes;

(c) pricing of termination for convenience settlements; and

(d) any other situation in which cost analysis is required.

(2) Limitation. Cost principles in this subpart are not applicable to:

(a) the establishment of prices under contracts made by competitive sealed bidding or otherwise based on adequate price competition rather than the analysis of individual, specific cost elements, except that this subpart does apply to the establishment of adjustments of price for changes made to contracts;

(b) prices which are fixed by law or rule;

(c) prices which are based on established catalog prices as defined in Section 63G-6-103(10) of the Utah Procurement Code, or established market prices; and

(d) stipulated unit prices.

R33-7-102. Allowable Costs.

(1) General. Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable as provided in the contract. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred or, in the case of forward pricing, the amount estimated to be incurred in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits such as discounts, rebates, refunds, and property disposal income.

(2) Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to other activities. In pricing a proposal, a contractor shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.

(3) When Allowable. The contract shall provide that costs shall be allowed to the extent they are:

(a) reasonable, as defined in Section 7-103;

(b) allocable, as defined in Section 7-104;

(c) not made unlawful under any applicable law;

(d) not unallowable under Section 7-105 or Section 7-106; and

(e) actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

R33-7-103. Reasonable Costs.

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

(1) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(2) the restraints inherent in and the requirements imposed by the factors generally accepted sound business practices, arm's

length bargaining, federal and state laws and regulations, and contract terms and specifications;

(3) the action that a prudent businessman would take under the circumstances, considering responsibilities to the owners of the business, employees, customers, the purchasing agency, and the general public;

(4) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and

(5) any other relevant circumstances.

R33-7-104. Allocable Costs.

(1) General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

(a) is incurred specifically for the contract;

(b) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

(c) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

(2) Allocation Consistency. Costs are allocable as direct or indirect costs. Similar costs shall be treated consistently either as direct costs or indirect costs except as provided by these rules. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

(3) Direct Cost. A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

(4) Indirect Costs.

(a) An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amount may be treated as indirect costs, provided that the treatment produces substantially the same results as treating the cost as a direct cost.

(b) Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

(c) The contractor's method of distribution may require examination when:

(i) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;

(ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(iii) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

(d) The base period for indirect cost allocation is the one in which the costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In these cases, an appropriate period should be agreed to in advance.

R33-7-105. Treatment of Specific Costs.

(1) Advertising. The only allowable advertising costs are those for:

- (a) the recruitment of personnel;
- (b) the procurement of scarce items;
- (c) the disposal of scrap or surplus materials;
- (d) the listing of a business' name and location in a classified directory; and
- (e) other forms of advertising as approved by the purchasing agency when in the best interest of the agency.

(2) Bad Debts. Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are unallowable.

(3) Contingencies.

(a) Contingency costs are contributions to a reserve account for unforeseen costs. Contingency costs are unallowable except as provided in subsection (3) (b) of this section.

(b) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for these risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.

(4) Depreciation and Use Allowances.

(a) Depreciation and use allowances are allowable to compensate contractors for the use of buildings, capital improvements, and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

(b) The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

(c) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the purchasing agency will accept any method which is accepted by the Internal Revenue Service.

(d) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, and the affect of any increased maintenance or decreased efficiency.

(5) Entertainment.

(a) Entertainment costs include costs of amusements, social activities, and incidental costs such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.

(b) Nothing shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by employer related services, it shall be treated as a credit as provided in Section 7-207. This section shall not make unallowable costs incurred for meetings or conferences, including costs of food, rental facilities, and transportation where the primary purpose of incurring cost is the dissemination of technical information or the stimulation of production.

(6) Fines and Penalties. Fines and penalties include all costs incurred as the result of violations of or failure to comply with federal, state, and local laws and rules. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the procurement officer. To the extent that workman's compensation is considered by state law to constitute a fine or penalty, it shall not be an allowable cost under this subsection.

(7) Gifts, Contributions, and Donations. A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a nonprofit institution which are not transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions, and donations are unallowable.

(8) Interest Costs.

(a) Interest is a cost of borrowing. Interest is not allowable except as provided in subsection (8)(b) of this section.

(b) Interest costs on contractor claims for payments due under purchasing agency contracts shall be allowable as provided in Section 63G-6-820 of the Utah Procurement Code.

(9) Losses Incurred Under Other Contracts. A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

(10) Material Costs.

(a) Material costs are the costs of all supplies, including raw materials, parts, and components whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor, which are acquired in order to perform the contract. Material costs are allowable, subject to subsection 10(b) and subsection 10(c) of this section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.

(b) Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

(c) Allowance for all materials transferred from any division including the division performing the contract, subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor determined in accordance with these cost principles rules, except that double charging of indirect costs is unallowable, except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the procurement officer and the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and

delivery conditions and:

(i) the price is established either by the established catalog price, as defined in Section 63G-6-103(10) of the Utah Procurement Code; or

(ii) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

(11) Taxes.

(a) Except as limited in subsection 11(b) of this section, all taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.

(b) The following costs are unallowable:

(i) federal income taxes and federal excess profit taxes;

(ii) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the procurement officer; and

(iv) income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.

(c) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.

(d) Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are allowable costs.

R33-7-106. Costs Requiring Prior Approval to be Allowable.

(1) General. The costs described in subsections (2), (3), (4), and (5) of this section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the procurement officer. In other situations those costs are negotiable in accordance with general standards.

(2) Pre-Contract Costs. Pre-contract costs are those incurred prior to the effective date of the contract directly pursuant to, and in anticipation of, the award of the contract. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

(3) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs. Bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

(4) Insurance.

(a) Insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are allowable in accordance with these cost principles. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(b) Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.

(c) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

(5) Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs are allowable as indirect costs in accordance with these rules, except that costs incurred in litigation against the purchasing agency are unallowable.

R33-7-107. Applicable Credits.

(1) Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

(2) Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.

(3) Refund. The purchasing agency shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

R33-7-108. Advance Agreements.

(1) Purpose. Both the purchasing agency and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the contract the treatment to be accorded special or unusual costs.

(2) Procedure Required. Advance agreements may be negotiated either before or after contract award, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties, and incorporated in the contract.

(3) Limitation on Costs Covered. An advance agreement shall not provide for any treatment of costs inconsistent with these rules unless a determination has been made pursuant to Section 7-210.

R33-7-109. Use of Federal Cost Principles.

(1) Cost Negotiations. In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulation, 48 CFR 901 (1993), or Federal Procurement Regulations, 48 CFR 901 (1993), the procurement officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to subsection (2) of this section.

(2) Incorporation of Federal Cost Principles; Conflicts Between Federal Principles and this Part.

(a) In contracts not awarded under a program which is funded by federal assistance funds, the procurement officer may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement officer and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the federal cost principles shall clearly state that to the extent federal cost principles conflict with the rules issued pursuant to Section 63G-6-415(1), the state rules shall control.

(b) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the

extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6-415(1) of the Utah Procurement Code, the cost principles specified in the grant shall control.

R33-7-110. Authority to Deviate from Cost Principles.

If a procurement officer desires to deviate from the cost principles set forth in these rules, a written determination shall be made by the officer specifying the reasons for the deviation.

KEY: government purchasing

1988

63G-6

Notice of Continuation April 17, 2014

R33. Administrative Services, Purchasing and General Services.**R33-9. Insurance Procurement.****R33-9-101. Standard Bidding Method.**

All new or renewal liability insurance purchases regardless of premium size and all other new or renewal insurance purchases over \$5,000 annual premium will be made after advertisement for public bid, in accordance with these rules, except in cases of emergency for nonliability policies. In awarding the bid, the procurement officer shall consider the following:

- (1) financial resources of agent, broker and underwriting company;
- (2) quality of prior service rendered to the state;
- (3) service facilities available in-state;
- (4) service reputation;
- (5) insurance experience and expertise;
- (6) coverages and services to be provided; and
- (7) any other reasonable factors which will provide the best possible coverage and service to the purchasing agency.

R33-9-102. Alternate Bidding Method.

To avoid oversaturation of limited primary or reinsurance markets, a two-step bidding method may be used at the option of the procurement officer.

(1) All interested agents and brokers would be required to qualify for final bidding according to reasonable selection criteria such as: similar accounts in office; size of firm; background of firm principles; specialized knowledge or expertise; and any other reasonable factors which will provide the best possible coverage for the purchasing agency. At least three unaffiliated brokers or agents must qualify for final bidding.

(2) The prequalified group of final bidders must submit a list of markets to the procurement officer in order of preference. The procurement officer will then, as equitably as possible, assign no more than five and no less than three markets to each final bidder, based upon their preferences.

Bidders will then submit an official bid for each assigned market, according to bid specifications.

**KEY: government purchasing
1988**

63G-6

Notice of Continuation April 17, 2014

R37. Administrative Services, Risk Management.**R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments.****R37-4-1. Authority and Calculation Process.**

Pursuant to UCA 63G-7-604(4) the Risk Manager hereby establishes a new limitation of judgment.

Accordingly, the Risk Manager has calculated the consumer price index (CPI) for calendar years 2011 and 2013 using the standards provided in Sections 1(f)(4) and 1 (f)(5) of the Internal Revenue Code. Section 1(f)(4) has defined the CPI for any calendar year to mean the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year. Section 1(f)(5) has defined "consumer price index" to mean the index used for all-urban consumers published by the Department of Labor. By applying these standards, the consumer price index for the calendar year 2011 is calculated to be 222.43 and the index for 2013 is 232.02. The percentage difference between the 2011 index and the 2013 index was then computed to be 4.3%.

R37-4-2. New Limitation of Judgment Amounts.

As a result of the above required calculations, the new limitation of judgment amounts currently required by UCA 63G-7-604(1) has been increased as follows, and is effective July 1, 2014 for claims occurring on or after that date:

1) The limit for damages for personal injury against a governmental entity, or an employee who a governmental entity has a duty to indemnify, is \$703,000 for one person in any one occurrence, and \$2,407,700 aggregate amount of individual awards that be may awarded in relation to a single occurrence; and

2) The limit for property damages (excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation) against a governmental entity, or an employee whom a governmental entity has a duty to indemnify is \$281,300 in any one occurrence.

R37-4-3. Limitations of Judgments by Calendar Date.

The limitation on judgments are established by the date of the occurrence. The dates and dollar amounts are as follows:

1) Incident(s) occurring before July 1, 2001 - \$250,000 for one person in an occurrence, \$500,000 aggregate for two or more persons in an occurrence; and \$100,000 for property damage for any one occurrence as explained in R37-4-2(2).

2) Incident(s) occurring on or after July 1, 2001 - \$500,000 for one person in an occurrence, \$1,000,000 aggregate for two or more persons in an occurrence; and \$200,000 for property damage for any one occurrence as explained in R37-4-2(2).

3) Incident(s) occurring on or after July 1, 2002 - \$532,500 for one person in an occurrence, \$1,065,000 aggregate for two or more persons in an occurrence; and \$213,000 for property damage for any one occurrence as explained in R37-4-2(2).

4) Incident(s) occurring on or after July 1, 2004 - \$553,500 for one person in an occurrence, \$1,107,000 aggregate for two or more persons in an occurrence, and \$221,400 for property damage for any one occurrence as explained in R37-4-2(2).

5) Incident(s) occurring on or after July 1, 2006 - \$583,900 for one person in an occurrence, \$1,167,900 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(2).

6) Incident(s) occurring on or after July 1, 2007 - \$583,900 for one person in an occurrence, \$2,000,000 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-

2(2).

7) Incident(s) occurring on or after July 1, 2008 - \$620,700 for one person in an occurrence, \$2,126,000 aggregate for two or more persons in an occurrence, and \$248,300 for property damage for any one occurrence as explained in R37-4-2(2).

8) Incident(s) occurring on or after July 1, 2010 - \$648,700 for one person in an occurrence, \$2,221,700 aggregate for two or more persons in an occurrence, and \$259,500 for property damage for any one occurrence as explained in R37-4-2(2).

9) Incident(s) occurring on or after July 1, 2012 - \$674,000 for one person in an occurrence, \$2,308,400 aggregate for two or more persons in an occurrence, and \$269,700 for property damage for any one occurrence as explained in R37-4-2(2).

10) Incident(s) occurring on or after July 1, 2014 - \$703,000 for one person in an occurrence, \$2,407,700 aggregate for two or more persons in an occurrence, and \$281,300 for property damage for any one occurrence as explained in R37-4-2(2).

KEY: limitation on judgments, risk management, Governmental Immunity Act caps

April 30, 2014

63G-7-604(4)

Notice of Continuation May 30, 2012

R58. Agriculture and Food, Animal Industry.**R58-3. Brucellosis Vaccination Requirements.****R58-3-1. Authority.**

(1) Promulgated under the authority of section 4-31-109 and Subsections 4-2-2(1)(c)(i), 4-2-2(1)(j).

(2) It is the intent of this rule to state the brucellosis vaccination requirements for cattle and bison within Utah.

R58-3-2. Definitions.

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

(2) "Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.

(3) "Brucellosis Technician" means an individual approved and trained by the State Veterinarian or designee to administer *Brucella abortus* vaccine and appropriately identify the animal.

(4) "Cattle" means all domestic bovine (genus Bos).

(5) "Official USDA vaccination tag" means a metal identification eartag that provides unique identification for each individual animal by conforming to the nine (9)-character alphanumeric national uniform eartagging system or any other unique identification device approved by the United States Department of Agriculture.

(6) "RFID" means a radio frequency identification device used as individual identification of livestock.

R58-3-3. Utah Cattle and Bison Vaccination Requirements.

(1) All Utah cattle and bison heifers intended for replacement breeding animals must be vaccinated against *Brucella abortus*.

(2) Vaccination of cattle and bison heifer calves shall be administered by an accredited veterinarian or by a brucellosis technician.

(3) All cattle and bison heifers shall be vaccinated with strain RB-51 administered between 4 and 12 months of age. These heifers shall be properly identified by official tattoos and ear tag (either official USDA vaccination tag or RFID of approved design) and shall be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.

(4) Cattle and bison heifers not intended for replacement breeding are exempt from the vaccination requirement in subsection R58-3-3(1).

**KEY: brucellosis, vaccination, cattle, bison
April 16, 2014**

**4-31-109
4-2-2(1)(c)(i)
4-2-2(1)(j)**

R65. Agriculture and Food, Marketing and Development.
R65-12. Utah Small Grains and Oilseeds Marketing Order.
R65-12-1. Authority.

A. Promulgated under authority of Subsection 4-2-2(1)(e), which authorizes issuing marketing orders to promote orderly market conditions for agricultural products.

B. The Commissioner of Agriculture and Food finds that it is in the public interest to establish a marketing order to improve conditions in the small grains and oilseeds producing industry. The Commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the registered producers and handlers voting on the referendum. It is therefore ordered by the Commissioner that this Order be established to assure an effective and coordinated program to maintain and expand the Utah small grains and oilseed industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-12-2. Definition of Terms.

A. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

B. "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, legal representative, or any other entity.

C. "Small grains and oilseeds" means wheat, barley, safflower, canola and any other small grain or oilseed produced or to be produced in Utah.

D. "Producer" means a person owning or leasing cropland consisting of at least 40 acres producing grain and/or oilseed.
 E. "Registered producers" means producers who meet the minimum threshold of producing at least 40 acres of grain and/or oilseed for registration to vote on the referendum and have indicated that they want to be included in the marketing order voting process by certifying their eligibility to vote in the referendum.

F. "Handler" means an individual or an organization that purchases small grains or oilseed products.

G. "Purchase" means payment made to a producer by an individual or other entity.

R65-12-3. Board.

A. The Utah Small Grains and Oilseeds Board is hereby established consisting of five members of the small grains and oilseeds industry (no more than 2 individuals from the same county can serve simultaneously), plus up to two ex-officio non-voting members from Utah State University, the Utah Department of Agriculture and Food or farm organization of the Board's choice. An ex-officio non-voting member can serve as Secretary for the Board.

B. The original members of the Board shall be selected by the Commissioner.

C. Successors to original members shall be appointed by the Commissioner. Two members shall be appointed for a period of three years. Three members shall be appointed for a period of four years. After the first three years, each appointed member shall serve for a period of four years. This rotation shall be in effect for the term of the marketing order. In the event of a vacancy the Commissioner shall appoint a new member from names submitted by the Board.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more than eight consecutive years without a break in term of at least one year.

E. The officers of the Board shall be selected from the five Board members at their first meeting after organization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office, it shall be filled through an election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of the Utah small grains and oilseeds producers,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the Small Grains and Oilseeds Marketing Board,

3. to support, fund and/or conduct educational programs and advertising to promote grains, oilseeds and their products.

4. to support and/or fund research projects to improve the profitability of the Utah small grains and oilseeds industry.

5. to engage in any activity to promote the Utah small grains and oilseeds industry.

G. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business. The Board shall meet at least once annually and more often as deemed necessary by the Board.

H. Each member of the Board is entitled to per diem and expenses in accordance with Sections 63A-3-106 and 63A-3-107.

I. A financial report will be made available annually for members of the industry by the Small Grains and Oilseed Marketing Board.

R65-12-4. Provisions of the Order.

A. This order provides for:

1. Grading standards shall not be established below any minimum standards now prescribed by law for the State.

2. Advertising and sales promotion to create new or larger markets for small grains and oilseeds products produced in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to particular brand or trade name.

3. The labeling, marketing, or branding of grain and oilseed products in conformity with the regulations of the Commissioner or the laws of the State of Utah already in existence and written in the Utah Code.

4. Research projects and experiments for the purpose of improving the general condition of the small grains and oilseeds industry and for the purpose of protecting the health of the people of Utah.

5. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the board his or her pro rata share of such expenses as the Commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 5 cents per bushel of wheat sold (after all dockage has been deducted), and up to 10 cents per hundred weight on barley, safflower and canola sold (after all dockage has been deducted), to the Board quarterly. The discretionary assessment shall be set by majority vote of the Board, and approved by the Commissioner. The initial assessment shall be 3.5 cents per bushel on wheat and 7 cents per hundred weight on barley safflower and canola. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable upon sale of the product. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers.

2. Only grains and oilseeds produced in Utah shall be assessed. The assessment of each producer shall be deducted from the producer's gross receipt by the purchaser or handler. All proceeds from the deducted portion shall be paid at least quarterly to the Small Grains and Oilseeds Board. Failure of a

purchaser or handler to collect and submit the assessment to the Board will result in a penalty to the purchaser or handler of two times the assessment amount. A purchaser or handler who collects the assessment but fails to submit payment to the Board is subject to a penalty equal to three times the assessment amount.

3. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Handlers may be audited on a random basis as deemed necessary by the Board with results included in the annual audit. Copies of the annual audit shall be available to any contributor upon request.

4. The Board is required to reimburse the Commissioner for any funds as are expended by the Commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to this Order. Any funds remaining at the end of any year over and above the necessary expenses of said Board may be carried over to the next year, or divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year. If carry over funds exceed \$300,000 at the end of any fiscal year, with the Commissioner's approval, the Board may suspend assessments of funds for the ensuing year or longer if deemed appropriate.

6. The Order shall become operational only if it is approved by at least 50 percent of the registered and certified producers and handlers voting in the referendum.

R65-12-5. Board - Member's Liability.

No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-12-6. Complaints for Violations - Producer.

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the state.

R65-12-7. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he/she may determine there is no longer an industry need for such order. A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

R65-12-8. Annual Meeting.

The Board shall meet at least annually and as often as the Board deems necessary.

**KEY: promotions
April 16, 2014**

4-2-2(1)(e)

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.

Violation Degree and Frequency	Warning Verbal/Written	Fine \$ Amount	Suspension No. of Days	Revoke License
Minor				
1st	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
Over 1		3,000 to 25,000	15 to

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

Violation Degree and Frequency	Warning Verbal/Written	Fine \$ Amount	Suspension No. of Days
Minor			
1st	X		
2nd		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 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.

(3) Compliance with subsections (1) and (2) are fundamental licensing requirements, the violation of which will result in the issuance of an Order to Show Cause in accordance with R81-1-6 and action on the license as determined by the commission in accordance with 32B-1-304(2).

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) "Seminudity", "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.

R81-1-32. Further Application.

(1) If an applicant has at any time been denied a license or permit based on the locality within which the proposed licensed premises is located, no further application from the applicant pertaining to the same premises or building location shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(2) If an applicant has at any time been denied a license or permit based on the person's ability to manage and operate a retail license of the type for which the person is applying, no further application from the applicant shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(3) If an applicant has at any time been denied a license based on the nature or type of retail operation of the proposed retail licensee, no further application shall be considered for that license type unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(4) If an applicant has at any time been denied a license or permit based on any other factor the commission considers necessary, the commission may, in its discretion determine under what circumstances in which a further application will be considered.

(5) The commission may prescribe a time period between the denial and hearing a request for further application.

KEY: alcoholic beverages

April 29, 2014

Notice of Continuation May 10, 2011

32B-2-201(10)

32B-2-202

32B-3-203(3)(c)

32B-5-304

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 ©

R131. Capitol Preservation Board (State), Administration.
R131-13. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.

R131-13-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63C-9-403.

R131-13-2. Authority.

This rule is authorized under Subsection 63C-9-301(3)(a) whereby the Capitol Preservation Board may make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as well as Section 63C-9-403 that requires this rule related to health insurance provisions in certain design and construction contracts.

R131-13-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63C-9-403.

(2) In addition:

(a) "Board" means the Capitol Preservation Board established pursuant to Section 63C-9-201.

(b) "Executive Director" means the executive director of the Capitol Preservation Board including, unless otherwise stated, the executive director's duly authorized designee.

(c) "Employee(s)" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(d) "State" means the state of Utah.

R131-13-4. Applicability of Rule.

(1) Except as provided in Subsection R131-13-4(2) below, R131-13 applies to all design or construction contracts entered into by the Board or the executive director, or on behalf of the Board, on or after July 1, 2009, and

(a) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and

(b) applies to a subcontractor if the subcontract, at any tier, is in the amount of \$750,000 or greater.

(2) Rule R131-13 does not apply if:

(a) the application of this Rule R131-13 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) This Rule R131-13 does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R131-13-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R131-13-4(1) is guilty of an infraction.

R131-13-5. Contractor to Comply with Section 63C-9-403.

All contractors and subcontractors that are subject to the requirements of Section 63C-9-403 shall comply with all the requirements, penalties and liabilities of Section 63C-9-403.

R131-13-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this Rule R131-13 or Section 63C-9-403:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,

Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R131-13-7. Requirements and Procedures a Contractor Must Follow.

A contractor, including consultants and designers, must comply with the following requirements and procedures in order to demonstrate compliance with Section 63C-9-403.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor, including consultants, designers and others under contract with the Board or the executive director that is subject to the requirements of Rule R131-13 no later than the time the contract is entered into or renewed:

(a) demonstrate compliance by a written certification to the executive director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents; and

(b) the contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors, including subconsultants, at any tier that are subject to the requirements of Rule R131-13.

(2) Recertification. The executive director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection 63C-9-403(1)(c) and defined in Section 26-40-115 is met by the contractor if the contractor provides the executive director with a written statement of actuarial equivalency from either the Utah Insurance Department; an actuary selected by the contractor; or the contractor's insurer; or an underwriter who is responsible for developing the employer group's premium rates.

For purposes of this Rule R131-13-7(3), actuarially equivalency is achieved by meeting or exceeding the requirements of Section 26-40-115 which are also delineated on the DFCM website at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>.

(4) The health insurance must be available upon the first day of the calendar month following ninety days from the date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to Rule R131-13 must demonstrate compliance with Rule R131-13 in any annual submittal. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of Rule R131-13.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to Rule R131-13 must demonstrate compliance with Rule R131-13 for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of Rule R131-13.

(7) Notwithstanding any prequalification process, any contract subject to Rule R131-13 shall contain a provision

requiring compliance with Rule R131-13 from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under Rule R131-13 conducted by the Board or executive director shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by the Board or Executive Director. The penalties that may be imposed by the Board or executive director if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of Rule R131-13 may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of this Rule R131-13 shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R131-13-7(8)(c)(i) as provided in Subsection 63C-9-403(7)(a)(ii).

R131-13-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in Rule R131-13 shall be construed as to create any contractual relationship whatsoever between the State, the Board, or the executive director with any subcontractor or subconsultant at any tier.

KEY: health insurance, contractors, contracts

February 21, 2012

63C-9-403

Notice of Continuation May 1, 2014

63C-9-301(3)(a)

R154. Commerce, Corporations and Commercial Code.**R154-2. Utah Uniform Commercial Code, Revised Article 9 Rules.****R154-2-100. Definitions.**

(1) Terms included in this Subsection R154-2-100(1) shall have the meanings stated.

(a) "Active Record" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the Searchable Indexes.

(b) "Address" means:

(i) any street address, route number (may include box) or post office box number that includes a city, state, and zip code within the United States of America; or

(ii) any address that purports to be a mailing address outside the United States of America.

(c) "Amendment Statement" means a UCC record that amends the information contained in a financing statement, and includes:

- (i) an assignment;
- (ii) a continuation; or
- (iii) a termination.

(d)(i) "Assignment Statement" means an amendment that assigns to another person all or a part of a secured party's power to authorize an amendment to a financing statement.

(ii) Any assignment statement not clearly marked on the filing form as a partial assignment shall be deemed a full assignment.

(e) "Information Statement" means a UCC record indicating that a financing statement is inaccurate or wrongfully filed.

(f) "Filing office" or "filing officer" means the Utah Division of Corporations and Commercial Code in the Utah Department of Commerce.

(g) "Filing officer statement" means a statement entered into the filing office's UCC information management system to correct an error made by the filing office.

(h) "Initial financing statement" means a UCC record by which the filing office establishes the initial record of filing of a financing statement.

(i)(i) "Remitter" means a person who tenders a UCC record to the filing officer for filing, including:

- (A) the filer;
- (B) an agent of the filer responsible for tendering the record for filing; or
- (C) a service provider acting as a filer's representative in the filing process.

(ii) "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service.

(j) "Searchable indexes" means a list maintained in the UCC information management system that may be searched by:

- (i) individual debtor name(s); or
- (ii) organization debtor name(s).

(k) "Secured party of record" means:

(i) a secured party of record as defined in the UCC;

(ii) a person:

(A) who is on record as a secured party; and

(B) with respect to whom an amendment is filed purporting to delete the person as a secured party of record; or

(iii) the person identified as the assignor on an amendment that purports to be an assignment.

(l) "UCC" means the Uniform Commercial Code as adopted in this State.

(m) "UCC information management system" means the data system used by the filing office to store, index, and retrieve information relating to financing statements as described in Subsection R154-2-300 of these rules.

(n) "UCC record" means:

(i) an initial financing statement;

(ii) an amendment;

(iii) an assignment;

(iv) a continuation statement;

(v) a termination statement;

(vi) a filing officer statement;

(vii) an information statement; or

(viii) any other record maintained by the filing office, whether the record is in an electronic format or paper-based.

(o) "Unlapsed record" means a UCC record that:

(i) has been stored and indexed in the UCC information management system; and

(ii) with respect to all secured parties of record, has not lapsed under UCC Section 9-515.

(2) Any term that is not defined in Subsection R154-2-100(1) but that is defined by the UCC shall have the meaning accorded the term by the UCC.

R154-2-101. Means to Deliver UCC Records; Time of Filing.

(1)(a) Subsection R154-2-101(1)(b) does not apply to:

(i) an initial financing statement that is being filed in connection with:

(A) a manufactured-home; or

(B) a public-finance transaction; or

(i) a financing statement that is filed:

(A) against a debtor that is a transmitting utility; and

(B) in order to affect the filing office's determination of a lapse date under Subsection R154-2-307(3) or R154-2-308.

(b) UCC records other than those identified in Subsection R154-2-101(1)(a) may be tendered for filing at the filing office as follows:

(i) Personal delivery by the Remitter or by an agent of the Remitter.

(A) The filing shall be tendered at the filing office's physical location.

(B) The time of filing shall be the time delivery is taken by the filing office.

(C) To utilize personal delivery, the Remitter shall remain at the filing office for a determination of whether the UCC record will be taken.

(D) A filing tendered by personal delivery may subsequently be rejected by the filing office.

(ii) Courier delivery by a person other than the Remitter or an agent of the Remitter.

(A) The filing shall be tendered at the filing office's physical location.

(B) If delivered when the filing office is open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the next close of business following the time of delivery.

(C) If delivered when the filing office is not open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) close of business on the next day following the time of delivery and on which the filing office is open for business.

(D) A filing tendered by courier may subsequently be rejected by the filing office.

(iii) Postal service delivery.

(A) The filing shall be mailed to the filing office's mailing address.

(B) If delivered when the filing office is open for business, the time of filing shall be the next close of business following the time of delivery.

(C) If delivered when the filing office is not open for business, the time of filing shall be the close of business on the next day following the date of delivery and on which the filing

office is open for business.

(D) A filing tendered by postal service delivery may subsequently be rejected by the filing office.

(iv) Electronic mail.

(A) The filing shall be submitted to the filing office's e-mail address.

(B) If submitted when the filing office is open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the next close of business following the time of submission.

(C) If submitted when the filing office is not open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the close of business on the next day following the time of submission and on which the filing office is open for business.

(D) A filing tendered by electronic mail may subsequently be rejected by the filing office.

(v) Telefacsimile delivery.

(A) The filing shall be faxed to the filing office's fax filing telephone number.

(B) If faxed when the filing office is open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the next close of business following the time of submission.

(C) If faxed when the filing office is not open for business, the time of filing shall be the earlier of:

(I) the time the UCC record is first examined by the filing office for processing; or

(II) the close of business on the next day following the time of submission and on which the filing office is open for business.

(D) A filing tendered by telefacsimile delivery may subsequently be rejected by the filing office.

(vi) Electronic filing -- XML format.

(A) This Subsection R154-2-101(1)(b)(vi) does not apply to:

(I) information statements; and

(II) filing officer statements.

(B) To submit an electronic filing in XML format, a Remitter shall first contact the filing office:

(I) to become an authorized XML Remitter; and

(II) to obtain the filing office implementation guide prescribing the XML Format acceptable for use.

(C) The time of filing shall be the time that the filing office's UCC information management system analyzes the relevant transmission and determines that all required elements of the transmission have been received in a required format and are machine-readable.

(vii) Electronic filing -- ANSI X12 154 format.

(A) To submit an electronic filing in ANSI X12 154 format, a Remitter shall first contact the filing office to obtain the filing office implementation guide prescribing the use of ANSI X12 154.

(B) The time of filing shall be the time the on-line system acknowledges entry of all required elements of the UCC record in the proper format.

(viii) Electronic filing -- web page data entry.

(A) To submit an electronic filing through the filing office's website, a Remitter shall follow the data entry and `payment procedures provided at http://corporations.utah.gov/ucc-cfs/ucc.html`.

(B) The time of filing shall be the time the on-line system acknowledges entry of all required elements of the UCC record

in the proper format.

(2)(a) This Subsection R154-2-101(2)(b) applies to:

(i) an initial financing statement that is being filed in connection with:

(A) a manufactured-home; or

(B) a public-finance transaction; or

(ii) a financing statement that is filed:

(A) against a debtor that is a transmitting utility; and

(B) in order to affect the filing office's determination of a lapse date under Subsection R154-2-307(3) or R154-2-308.

(b) To file a UCC record identified in this Subsection R154-2-101(2)(a), a Remitter shall:

(i) check the appropriate box on a UCC1 Financing Statement filed with respect to the financing statement; or

(ii) transmit the requisite information in the proper field in the applicable electronic filing.

(3) Means of communication.

(a) Regardless of the method of delivery, information submitted to the UCC filing office shall be communicated in the form of characters that are:

(i) defined in a character set forth in this Subsection R154-2-101; or

(ii) otherwise determined by the filing office to be acceptable.

(b) A financing statement or amendment form shall designate separate fields for:

(i) organization name(s) and individual name(s); and

(ii) the surname, first personal name, additional name(s)/initial(s), and suffix(es) for individual name(s).

R154-2-102. Search Request Delivery.

(1) A UCC search request may be delivered to the filing office by any of the means by which a UCC record may be delivered to the filing office.

(2) A search request may not be delivered by checking a box or otherwise including a search request in, or on, an initial financing statement, but may be delivered in, or on, a separate search request after the initial financing statement is filed.

R154-2-103. Forms.

The following forms are accepted by the filing office:

(1) any form prescribed by UCC Section 9-521;

(2) any paper-based form approved by the International Association of Commercial Administrators on or prior to April 20, 2011; and

(3) any form otherwise approved by the filing office from time to time, a list of which may be obtained on request.

R154-2-104. Fees.

All fees are established by the Utah Legislature according to the most current fee schedule.

R154-2-105. Expedited Service.

(1) Expedited service is available to process filings within one business day.

(2) Expedited service requires an additional filing fee according to the fee schedule.

R154-2-106. Methods of Payment.

(1) Filing fees and fees for public records services may be paid by the following methods:

(a) Cash, if paid in person at the filing office.

(b) Personal check, cashier's check, or money order made payable to the filing office, if the drawer (or the issuer in the case of a cashier's check or money order) is deemed creditworthy by the filing office in its discretion.

(c) Debit or credit card, if:

(i) the card is issued by an approved issuer; and

(ii) the Remitter provides the filing officer with:

- (A) the card number;
 - (B) the expiration date of the card;
 - (C) the name of the card issuer;
 - (D) the name of the person or entity to whom the card is issued; and
 - (E) the billing address for the card.
- (3) Payment by debit or credit card will not be deemed tendered until the card issuer or its agent confirms payment.

R154-2-107. Overpayment and Underpayment Policies.

- (1) Overpayment shall be handled in accordance with State and/or Agency refund policy.
- (2) Underpayment. Upon receipt of a document with an insufficient fee, the filing officer shall do the following:
- (a) send a notice of the deficiency to the Remitter; and
 - (b) return the UCC record to the Remitter pursuant to Subsection R154-2-204, along with a notice of rejection.
- (3)(a) A document that is rejected and returned under this Subsection R154-2-107(2) may be refiled.
- (b) The time of filing shall be the time and date on which the full filing fee is received by the filing office.

R154-2-108. Public Records Services.

- (1) Public records services shall be provided by the filing office on a non-discriminatory basis to any member of the public.
- (2) Copies of individual UCC records, bulk copies of records, and data elements from the filing office's UCC information management system shall be made available to the public by the filing office in such forms, at such times, and for such fees as the filing office may prescribe from time to time.
- (3) The filing office shall make such information regarding its prescribed forms, times, and fees as is then currently available at least weekly in every medium then available to the filing office.

R154-2-109. Fees for Public Records Services.

- (1) Fees for public records services shall be established by the filing office from time to time.
- (2) The filing office's fee schedule shall be available upon request.

R154-2-200. Role of Filing Officer.

Sections within the 200 series of this rule (e.g., R154-2-201) pertain to the role of the filing officer.

R154-2-201. Accepting and Refusing Records.

- (1) The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial.
- (2) In acting on a UCC record filed pursuant to these rules, the filing officer does not:
- (a) determine the legal sufficiency or insufficiency of the UCC record;
 - (b) determine that information in the record is correct or incorrect, in whole or in part; or
 - (c) create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

R154-2-202. Time for Filing a Continuation Statement.

- (1) First day permitted.
- (a) The first day on which a continuation statement may be filed is the date six months prior to the date on which the related financing statement is scheduled to lapse.
- (b) If no date can be generated pursuant to this Subsection R154-2-202(1)(a), the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement is scheduled to lapse.
- (c) Subsections R154-2-202(1)(a) and (b) are subject to:

- (i) the ability of the filing office to take delivery of the continuation statement as tendered; and
 - (ii) the continuation statement being properly delivered to the filing office pursuant to Subsection R154-2-101.
- (2) Last day permitted.
- (a) The last day on which a continuation statement may be filed is the date upon which the related financing statement lapses.
- (b) Subsection R154-2-202(2)(a) is subject to:
- (i) the ability of the filing office to take delivery of the continuation statement as tendered; and
 - (ii) the continuation statement being properly delivered to the filing office pursuant to Subsection R154-2-101.
- (3) In order to ensure that a continuation statement is timely filed, a Remitter shall effect delivery of the filing:
- (a) on or prior to the last day permitted; and
 - (b) on a date and at a time when the filing office is open for business.

R154-2-203. Grounds for Refusal.

- The filing office:
- (1) shall refuse to accept a UCC record that does not provide an address that meets the minimum requirements as set forth in Subsection R154-2-100(1)(b); and
- (2) may refuse to accept a UCC record for any one or more reasons as set forth in UCC Section 9-516.

R154-2-204. Procedure Upon Refusal.

- (1) Except as provided in Subsection R154-2-107, if the filing officer finds grounds to refuse a UCC record, the filing officer shall not refund the filing fee.
- (2) Communication of the refusal, the reason(s) for the refusal, and other related information shall be made to the Remitter:
- (a)(i) as soon as practicable; and
 - (ii) no later than two business days after the refused UCC record is received by the filing office; and
 - (b)(i) by the same means as the means by which such UCC record was delivered to the filing office;
 - (ii) by mail; or
 - (iii) by such more expeditious means as the filing office may determine.
- (3) Records of refusal, including a copy of the refused UCC record and the ground(s) for refusal, shall be maintained by the filing office.

R154-2-205. Refusal Errors.

- (1) If a secured party or a Remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused under Subsection R154-2-203:
- (a) the filing officer shall file the UCC record with the filing date and time the UCC record was originally tendered for filing; and
 - (b) a filing officer statement record relating to the relevant initial financing statement shall be placed in the UCC information management system:
 - (i) on the date that the corrective action is taken; and
 - (ii) providing the date of the correction and an explanation of the nature of the corrective action taken.
- (2) A record created under this Subsection R154-2-205(1) shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system.

R154-2-206. Notification of Defects.

- (1) Nothing in these rules shall be construed or interpreted to prevent a filing officer from communicating to a filer or a Remitter any apparent potential defect(s) in a UCC record,

regardless of whether the filing is accepted or refused for filing.

(2) The filing office is under no obligation to screen filings for defects.

(3) The responsibility for the legal effectiveness of filing rests with filers and Remitters, and the filing office bears no responsibility for such effectiveness.

R154-2-300. UCC Information Management System.

Sections within the 300 series of this rule (e.g., R154-2-301) pertain to the UCC Information Management System.

R154-2-301. General Provisions.

(1) The filing office shall use a UCC information management system to store, index, and retrieve information relating to financing statements.

(2) The UCC information management system shall include an index of the names of debtors included on financing statements that are Active Records.

R154-2-302. Primary Data Elements.

The primary data elements used in the UCC information management system are the following:

(1) Identification numbers.

(a)(i) Each initial financing statement is identified by a file number.

(ii) Identification of the initial financing statement is stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC information management system.

(iii) A record is created in the UCC information management system for each initial financing statement, and all information comprising such record is maintained in the system.

(iv) The record is identified by the same information assigned to the initial financing statement.

(b)(i) A UCC record other than an initial financing statement is identified by a unique file number assigned by the filing officer.

(ii) In the UCC information management system, records of all UCC records other than initial financing statements are linked to the record of their related initial financing statement.

(2) Type of Record. The type of UCC record from which data is transferred is identified in the UCC information management system from information supplied by the Remitter.

(3) Filing date and filing time.

(a) The filing date and filing time of UCC records are stored in the UCC information management system.

(b) Calculation of the lapse date of an initial financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC records to the UCC information management system.

(5) Page count. The total number of pages, including staff classification marks, in a UCC record is maintained in the UCC information management system.

(6) Lapse indicator.

(a) An indicator is maintained by which the UCC information management system identifies:

(i) whether or not a financing statement will lapse; and,

(ii) if applicable, when a financing statement will lapse.

(b) The lapse date is determined as provided in Subsections R154-2-307(3), 308, and 309(1).

(7) Indexes of names.

(a) The filing office maintains in the UCC information management system:

(i) a searchable index of organization debtor names; and

(ii) a searchable index of individual debtor names.

(b)(i) The filing office may also maintain a searchable index of names of secured parties of record.

(ii) Such an index need not be a separate database, but may

be comprised of records in the UCC information management system identified to be included in such searchable index.

R154-2-303. Individual Debtor Names.

(1) Individual debtor names. For purposes of this rule, an individual debtor name is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(2) Individual name fields.

(a) Individual debtor names are stored in files that include only the individual debtor names and not organization debtor names.

(b) Separate data entry fields are established for:

(i) surnames (last or family names);

(ii) first personal names (given names); and

(iii) additional name(s)/initial(s) of individuals.

(c) The name of a debtor with a single name (e.g., "Cher") is treated as a surname and shall be entered in the individual surname field.

(d) The filing officer assumes no responsibility for the accurate designation of the components of a name but shall accurately enter the data in accordance with the filer's designations.

(3) Titles, prefixes, and suffixes.

(a) Titles, prefixes (e.g. "Ms."), and suffixes or indications of status (e.g. "M.D.") are not typically part of a debtor's name.

(b) Suffixes used to distinguish between family members with otherwise identical names (e.g., "JR.") may be provided in the Suffix field.

(c) When entering a "name" into the UCC information management system, the filing office will enter data exactly as provided by the filer.

(4) Extended debtor name field.

(a) The Financing Statement form has limited space for individual debtor names. If any portion of the individual debtor name is too long for the corresponding field, the filer shall check the box that indicates the name is too long and enter the name in item 10 of the Addendum Form UCC1AD.

(b) A filing officer shall not refuse to accept a Financing Statement that lacks debtor information in item 1 and/or item 2 if the record includes an Addendum that provides a debtor name in item 10.

(5) Truncation - individual names. Personal name fields in the UCC information management system are fixed in length. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The lengths of data entry name fields are as follows:

(a) Surname: 50 characters;

(b) First personal name: 50 characters;

(c) Additional name(s)/initial(s): 50 characters; and

(d) Suffix: 5 characters.

R154-2-304. Organization Debtor Names.

(1) For purposes of these rules, an "organization debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor that is an organization, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(2) Single field.

(a) Organization debtor names are stored in files that include only organization debtor names and not individual debtor names.

(b) A single field is used to store an organization debtor name.

(3) Truncation - organization names. The organization

debtor name field in the UCC information management system is fixed in length. The maximum length is 500 characters. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the organization debtor name field.

R154-2-305. Collateral Being Administered by a Decedent's Personal Representative.

(1) The debtor name to be provided on a financing statement when the collateral is being administered by a decedent's personal representative is the name of the relevant decedent.

(2) In order for the UCC information management system to function in accordance with the usual expectations of filers and searchers, the filer shall provide the debtor name as an individual debtor name.

(3) The filing office shall enter data submitted by a filer in the fields designated by the filer exactly as the data appears in such fields.

R154-2-306. Collateral Held in a Trust.

(1) The debtor name to be provided when the collateral is held in a trust that is not a registered organization is:

- (a) the name of the trust as set forth in the trust's organic record(s), if the trust has such a name; or
- (b) if the trust is not so named, the name of the trust's settlor.

(2) In order for the UCC information management system to function in accordance with the usual expectations of filers and searchers:

- (a) the name of a trust or of a settlor that is an organization shall be provided as an organization debtor name without regard to the nature or character of the debtor; and
- (b) the name of a settlor who is an individual shall be provided as an individual debtor name without regard to the nature or character of the debtor.

(3) The filing office shall enter data submitted by a filer in the fields designated by the filer exactly as the data appears in such fields.

R154-2-307. Initial Financing Statement.

Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows.

- (1) Status of secured party.
 - (a) If no assignee is named, each secured party named on an initial financing statement shall be a secured party of record.
 - (b) If the UCC record names an assignee:
 - (i) the secured party/assignor shall not be a secured party of record; and
 - (ii) the secured party/assignee shall be a secured party of record.
- (2) Status of debtor. Each debtor name provided by the initial financing statement shall be indexed in the UCC information management system for as long as the financing statement is an Active Record.
- (3) Status of financing statement.
 - (a) The financing statement shall be an Active Record.
 - (b) A lapse date shall be calculated as follows:
 - (i) Unless this Subsection R154-2-307(3)(b)(ii) or (iii) applies, the lapse date shall be five years from the file date.
 - (ii) If the initial financing statement indicates, as provided in Subsection R154-2-101(2), that it is filed with respect to a public-financing transaction or a manufactured-home transaction, the lapse date shall be thirty years from the file date.
 - (iii) If the initial financing statement indicates, as provided in Subsection R154-2-101(2), that it is filed against a transmitting utility, there shall be no lapse date.

R154-2-308. Amendments Generally.

(1)(a) Unless this Subsection R154-2-308(1)(b) or (c) applies, the filing of an amendment has no effect on the status of the secured parties of record.

(b) If an amendment adds a debtor or a secured party, the new debtor or secured party shall be:

- (i) added to the appropriate index; and
- (ii) associated with the record of the financing statement in the UCC information management system.

(c) If an amendment designates an assignee, the filing shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC information management system.

(2)(a) Notwithstanding the filing of an amendment that deletes a debtor or a secured party from a financing statement, no debtor or secured party of record is deleted from the UCC information management system.

(b) A deleted secured party shall be treated by the filing office as a secured party of record, as the filing office cannot verify the effectiveness of an amendment.

(3) In general, the filing of an amendment does not affect the status of the financing statement.

R154-2-309. Continuation Statement.

(1) Continuation of lapse date.

(a) Upon the timely filing of one or more continuation statements by one or more secured parties of record, the lapse date of the financing statement shall be postponed:

- (i) one time only, regardless of whether more than one continuation statement is filed within a given 6-month period prior to a lapse date; and
- (ii) for a period of five years.

(b) Notwithstanding the immediate postponement of the lapse date with respect to one or more secured parties of record who timely file a continuation statement within a given 6-month period prior to a lapse date, such lapse date remains effective solely for purposes of determining whether a subsequent continuation statement filed in the same 6-month period is timely.

(2) Status. The filing of a continuation statement shall have no effect upon the status of:

- (a) any party to the financing statement; or
- (b) the financing statement.

R154-2-310. Termination.

The filing of a termination statement shall have no effect upon the status of:

- (1) any party to the financing statement; or
- (2) the status of the financing statement.

R154-2-311. Information Statement.

The filing of an information statement shall have no effect upon the status of:

- (1) any party to the financing statement;
- (2) the status of the financing statement itself; or
- (3) the data maintained in the UCC information management system.

R154-2-312. Procedure upon Lapse.

If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date, but no action is then taken by the filing office.

R154-2-313. Removal of Record.

(1) Unless this Subsection R154-2-313(2) applies, a financing statement shall remain as an Active Record until at least one year after it lapses.

(2) If a financing statement indicates that it is to be filed against a transmitting utility, it shall remain as an Active Record

until at least one year after it is terminated with respect to all secured parties of record.

(3)(a) On or after the first anniversary of a lapse or termination date:

(i) the filing office or the UCC information management system may remove the financing statement and all related UCC records from the Searchable Indexes or from the UCC information management system; and

(ii) upon such removal, the removed UCC Records shall cease to be Active Records.

(b) UCC Records removed from the UCC information management system shall be maintained as provided by filing office policy.

R154-2-400. Filing and Data Entry Procedures.

Sections within the 400 series of this rule (e.g., R154-2-401) pertain to filing and data entry procedures.

R154-2-401. Errors of the Filing Office.

(1) The filing office may correct data entry and indexing errors of filing office personnel in the UCC information management system at any time.

(2) If a correction is made to a record of a financing statement after the filing office has issued a search report with a through date and time (see Subsection R-154-2-506(2)(d)) that is on or after the filing date and time of the financing statement, the filing office shall associate with the record of the financing statement in the UCC information management system a note. The note shall set forth the date of the corrective action and an explanation of the correction.

(3) The filing office shall allow a Remitter 30 days to notify the filing office of any data entry errors, and the filing office shall correct those errors.

R154-2-402. Data Entry.

(1) Data are entered into the UCC information management system exactly as provided in a UCC record, without regard to apparent errors.

(2) Data provided in electronic form is transferred to the UCC information management system exactly as submitted by the Remitter.

R154-2-403. Verification of Data Entry.

(1) The filing office shall verify accuracy of the data from UCC records entered in accordance with Subsection R-154-2-402 into the UCC information management system.

(2) Data entry performed by a Remitter with respect to electronically filed UCC record(s) is the responsibility of the Remitter and is not verified by the filing office.

R154-2-404. Master Amendments.

(1) The filing office shall accept master amendments in writing stating the amendment requested.

(2)(a) The filing office shall provide an excel spreadsheet listing the filing(s) affected.

(b) It is the responsibility of the Remitter to acknowledge or correct the spreadsheet.

(c) Only those filings on the spreadsheet will be affected by the master amendment.

(3) The fee shall be a single filing fee established for master amendments and not per record amended.

R154-2-405. Notice of Bankruptcy.

The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

R154-2-406. Redaction of Certain Information.

The filing officer shall redact certain information from the information it provides to searchers and bulk data purchasers in accordance with Utah Code Title 63G, Chapter 2, the Utah Government Records Access and Management Act.

R154-2-500. Search Requests and Reports.

Sections within the 500 series of this rule (e.g., R154-2-501) pertain to search requests and reports.

R154-2-501. General Requirements.

(1) The filing officer maintains for public inspection a searchable index for all Active Records in the UCC information management system.

(2) Active Records shall be retrievable by:

(a) the name of the debtor; or

(b) the file number of the related initial financing statement.

(3) Each Active Record related to an initial financing statement is retrieved with the initial financing statement using either retrieval method identified in this Subsection R154-2-501(2).

R154-2-502. Search Requests -- Required Information.

(1) Search requests shall include the following:

(a) Name searched. A search request shall set forth the name of the debtor to be searched using designated fields for:

(i) organization or individual surname;

(ii) first personal name; and

(iii) additional name(s)/initial(s).

(b) Requesting party. A search request shall set forth the name and address of the person to whom the search result is to be sent.

(c) Fee. The appropriate fee shall be tendered by a method described in Subsection R154-2-106.

(d) Search logic.

(i) A search request shall specify if a search methodology other than that described in Subsection R154-2-504(2) is to be applied in conducting the search.

(ii) If no such methodology is specified, the methodology described in Subsection R154-2-504(2) shall be applied.

(2) A search request shall be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is the subject of the search.

R154-2-503. Search Requests -- Optional Information.

A search request may include the following:

(1) Copies. A request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:

(a) include a particular debtor address;

(b) include a particular city in the debtor address;

(c) were filed on a particular date or within a particular range of dates; or

(d) include a particular secured party name.

(2) Scope of search. A search request may ask for a search that reports all Active Records retrieved by the search rather than only Unlapsed Records retrieved by the search.

(3) Mode of delivery.

(a) A search request may specify a mode of delivery for search results.

(b) Any such request will be honored to the extent the requested mode is made available by the filing office and all requisite fees are tendered.

(4) Search request with filing.

(a) If a filer submits a search request with an initial financing statement, the search request shall be deemed to request a search to be conducted as soon as practicable such that

it would include all UCC records filed against the debtor name(s) provided on the initial financing statement on or prior to the date the initial financing statement is filed.

(b) A filer may indicate on the search request that it should be held until the filing office through date meets or exceeds the filing date of the initial financing statement.

R154-2-504. Search Methodology.

(1)(a) Search results are produced by the application of search logic to the name presented to the filing officer.

(b) Human judgment does not play a role in determining the results of the search.

(2) Standard search logic. The following rules describe the filing office's standard search logic and apply to all searches except those where the search request specifies that a non-standard search logic be used.

(a) There is no limit to the number of matches that may be returned in response to the search criteria.

(b) No distinction is made between upper and lower case letters.

(c)(i) Punctuation marks and accents are disregarded.

(ii) For the purposes of this rule, punctuation and accents include all characters other than:

(A) the numerals 0 through 9; and

(B) the letters A through Z, whether upper or lower case, of the English alphabet.

(d) To the extent practicable as determined by the filing office's programming of its UCC information management system, words and abbreviations at the end of an organization name that indicate the existence or nature of the organization are treated as follows:

(i) All spaces are disregarded.

(ii)(A) For first personal name and additional name(s)/initial(s) of individual debtor names:

(I) initials are treated as the logical equivalent of all names that begin with such initials; and

(II) first personal name and no additional name(s)/initial(s) is equated with all additional name(s)/initial(s).

(B) For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with:

(I) "John" or the initial "J" as the first personal name;

(II) "Smith" as the surname; and

(III) the initial "A" or any name beginning with "A" in the additional name(s)/initial(s) field.

(C) If the search request were for "John Smith" (first personal name and surname with no designation in the additional name(s)/initial(s) field), the search would retrieve all filings against individual debtors with:

(I) "John" or the initial J as the first personal name;

(II) "Smith" as the surname; and

(III) any name, any initial, or no name or initial in the additional name(s)/initial(s) field.

(iii) If the name being searched is the surname of an individual debtor name without any first personal name or additional name(s)/initial(s) provided, the search will retrieve from the UCC information management system all financing statements with individual debtor names that consist of only the surname.

(3) After using the preceding rules to modify the name being searched, the search will retrieve from the UCC information management system all Unlapsed Records, or, if requested by the searcher, all Active Records that pertain to financing statements with debtor names that exactly match the modified name being searched.

(4) Non-standard search logic. Non-standard search logic, such as a "wild card" search can be applied to a non-certified search upon request.

R154-2-505. Changes in Standard Search Logic.

If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that could alter search results, the filing office will provide public notice of such change.

R154-2-506. Search Responses.

The response to a search request shall include the following:

(1) Copies.

(a) Copies of all UCC records retrieved by the search, unless:

(i) limited copies are requested by the searcher; or

(ii) the searcher requests a certified search.

(b) Copies will reflect any redaction of personal identifying information required by law.

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

(a) identification of the filing office responsible for the search response;

(b) unique number that identifies the search report;

(c) date and time the report was generated;

(d) through date and time, meaning the date and time at, or prior to, which a UCC record must have been filed with the filing office in order for it to be reflected on the search;

(e) certification language consistent with current language;

(f) whether the scope includes both active and unlapsed records;

(g) search logic used;

(h) search logic disclaimer language;

(i) name searched, as provided by searcher;

(j) normalized name as provided by Subsection R154-2-504; and

(k) lien type searched, with the caveat that only those liens filed in the Utah Division of Corporations and Commercial Code that are statutorily permitted may be searched.

(3) Report. The search report shall contain the following:

(a) identification of the filing office responsible for the search report;

(b) unique number assigned under this Subsection;

(c) identification of each initial financing statement, including:

(i) a listing of all related amendments;

(ii) information statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria (including whether the searcher has requested Active Records or only Unlapsed Records);

(iii) initial financing statement file number;

(iv) date and time the initial financing statement was filed;

(v) lapse date;

(vi) debtor name(s) appearing of record;

(vii) debtor address(es) appearing of record;

(viii) secured party name(s) appearing of record;

(ix) secured party address(es) appearing of record;

(x) indication of type of each amendment, if any;

(xi) date and time each amendment, if any, was filed;

(xii) amendment file number of each amendment, if any;

(xiii) date and time an information statement, if any, was filed; and

(xiv) date and time a filing officer statement, if any, was filed.

R154-2-600. Agricultural Liens.

Rules affecting agricultural liens are found at Utah Administrative Code Section R154-1.

KEY: banking, equipment leasing, filing documents

April 21, 2014

70A-9a et seq.

Notice of Continuation May 10, 2011

**R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land
Surveyors Licensing Act Rule.**

R156-22-101. Title.

This rule is known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rule".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or this rule:

(1) "Complete and final", as used in Section 58-22-603, means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision", as used in Subsection 58-22-102(10), means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee", as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule, means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys", as used in Subsection 58-22-102(9), include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Highly toxic materials", as used in Subsection 58-22-102(14)(a)(ii)(F), is hazardous materials as defined in Section 307 of the 2009 International Building Code and Section 2703 of the 2009 International Fire Code.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering", as used in Subsection 58-22-102(9), and "engineering work as is incidental to the practice of architecture", as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1);

(d) unless exempt from licensure as provided in Subsection 58-22-305(1)(e), is work that affects not greater than 49 occupants as determined in Section 1004 of the 2009 International Building Code;

(e) unless exempt from licensure as provided in Subsection 58-22-305(1)(e), is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in 1604.5 of the 2009 International Building Code.

(7) "Maximum allowable quantities", as used in Subsection 58-22-102(14)(a)(ii)(F), is quantities of hazardous materials as set forth in Section 307 of the 2009 International Building Code, Tables 307.1(1) and 307.1(2), which when exceeded, would classify the building, structure or portion thereof as Group H-1, H-2, H-3, H-4 or H-5 hazardous use.

(8) "NCEES FE", as used throughout this rule, means the

National Council of Examiners in Engineering and Surveying Fundamentals of Engineering Examination.

(9) "NCEES FS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Surveying Examination.

(10) "NCEES PE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice of Engineering Examination.

(11) "NCEES PS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice in Surveying Examination.

(12) "NCEES SE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Structural Engineering Examination.

(13) "Professional structural engineering or the practice of structural engineering", as defined in Subsection 58-22-102(14), is further defined to exclude the design and oversight of the construction and installation of highway, utility, or pedestrian bridges.

(14) "Recognized jurisdiction", as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country that issues licenses to professional engineers, professional structural engineers, or professional land surveyors.

(15) "Responsible charge" by a principal, as used in Subsection 58-22-102(7), means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(16) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology (ABET, Inc.).

(17) "Under the direction of the licensee", as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(18) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-22-502.

R156-22-103. 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 22.

R156-22-104. 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.

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer and Professional Structural Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an

engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined by the NCEES Credential Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard. Deficiencies in course work reflected in the credential evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer or a professional structural engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an applicant applying for licensure as a professional land surveyor shall verify completion of one of the following land surveying programs affiliated with an institution that is recognized by the Council for Higher Education Accreditation (CHEA) and approved by the Division in collaboration with the Board:

(a) an associates in applied science degree in land surveying or geomatics;

(b) a bachelors, masters or doctorate degree in land surveying or geomatics;

(c) an equivalent land surveying program that includes completion of a bachelors, masters or doctorate degree in a field related to land surveying or geomatics comprised of a minimum of 30 semester hours or 42 quarter hours of course work in land surveying or geomatics which shall include the following courses:

(i) successful completion of a minimum of one course in each of the following content areas:

- (A) boundary law;
- (B) writing legal descriptions;
- (C) photogrammetry;
- (D) public land survey system;
- (E) studies in land records or land record systems; and
- (F) surveying field techniques; and

(ii) completion of the remainder of the 30 semester hours or 42 quarter hours from any or all of the following content areas:

- (A) algebra, calculus, geometry, statistics, trigonometry, not to exceed six semester hours or eight quarter hours;
- (B) control systems;
- (C) drafting, not to exceed six semester hours or eight quarter hours;

- (D) geodesy;
- (E) geographic information systems;
- (F) global positioning systems;
- (G) land development; and
- (H) survey instrumentation; or

(d) an equivalent land surveying program that includes completion of a bachelors, masters or doctorate degree in a field related to land surveying or geomatics that does not include some of the course work specified in (c)(i) or (ii), or both, as part of the degree program, provided that the deficient requirements specified in (c)(i) or (ii), or both, have been completed post degree; and

(e) if the degree was earned in a foreign country, the land surveying curriculum shall be determined by the NCEES

Credential Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Education Standard. Deficiencies in course work reflected in the credential evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) 2,000 hours of work experience constitutes one year (12 months) of work experience.

(b) No more than 2,000 hours of work experience can be claimed in any 12 month period.

(c) Experience shall be progressive on projects that are of increasing quality and requiring greater responsibility.

(d) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(e) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(f) Unless otherwise provided in this Subsection (1)(g), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(g) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(h) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(i) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the Board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(j) In addition to the supervisor's documentation, the applicant shall submit:

(i) at least one verification from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for; or

(ii) if a person verifying the applicant's credentials is not licensed in the profession:

(A) at least one verification from the unlicensed person; and

(B) a written explanation as to why the unlicensed person is best qualified to verify the applicant's knowledge, ability and competence to practice in the profession applied for.

(k) Duties and responsibilities of a supervisor. The duties

and responsibilities of a licensee under Subsection (1)(f) or other qualified person under Subsection (1)(g) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards and ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the Division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision documenting completion of a minimum of four years of full time or equivalent part time qualifying experience in professional engineering approved by the Division in collaboration with the Board in accordance with the following:

(A) The qualifying experience shall be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the Board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC/ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection

R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of full time or equivalent part time professional structural engineering experience obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) The qualifying experience shall be obtained after meeting the education requirements.

(c) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(d) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

- (A) steel;
- (B) concrete;
- (C) wood; or
- (D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(d), each applicant for licensure as a professional land surveyor shall submit verification of four years of full time or equivalent part time qualifying experience in land surveying obtained under the supervision of one or more licensed professional land surveyors

which experience may be obtained before, during or after completing the education requirements for licensure. The experience shall be certified by the licensed professional land surveyor supervisor.

(b) The four years of qualifying experience shall comply with the following:

(i) two years of experience specific to field surveying with actual "hands on" surveying, including all of the following:

- (A) operation of various instrumentation;
- (B) review and understanding of plan and plat data;
- (C) public land survey systems;
- (D) calculations;
- (E) traverse;
- (F) staking procedures;
- (G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) two years of experience specific to office surveying, including all of the following:

- (A) drafting (includes computer plots and layout);
- (B) reduction of notes and field survey data;
- (C) research of public records;
- (D) preparation and evaluation of legal descriptions; and
- (E) preparation of survey related drawings, plats and record of survey maps.

(c) A maximum of one year of qualifying experience may be granted for completion of a masters degree in land surveying or geomatics.

(d) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in land surveying or geomatics.

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES FE examination with a passing score as established by the NCEES except that an applicant who has completed one of the following is not required to pass the FE examination:

(A) a Ph.D. or doctorate degree in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering; or

(B) A Ph.D. or doctorate degree in engineering from a foreign institution if the engineering curriculum is determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard.

(ii) the NCEES PE examination or the NCEES SE examination with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the license application form.

(b) If an applicant was approved by the Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant shall successfully complete the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE

examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are established as the following:

(i) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(ii) the NCEES FE examination with a passing score as established by the NCEES;

(iii)(A) the NCEES SE examination;

(B) prior to April 2011, the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES;

(C) prior to January 1, 2004, an equivalent 16-hour state written examination with a passing score; or

(D) the NCEES Structural II exam and an equivalent 8-hour state written examination with a passing score.

(b) Prior to submitting an application for pre-approval to sit for the NCEES SE examination, an applicant must have successfully completed two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(e), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES FS examination with a passing score as established by the NCEES;

(ii) the NCEES PS examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75. An applicant who fails the Utah Local Practice Examination may retake the 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.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PS examination, an applicant shall successfully complete the education requirement set forth in Subsection R156-22-302b(2).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the Board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 10 years preceding the date of the license application, and who was not required to pass the NCEES PE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the Board may waive the NCEES

FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the Board may waive either the NCEES FS examination or the NCEES PS examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FS examination or the NCEES PS examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on March 31 of each odd numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall complete not fewer than 30 hours of qualified professional education directly related to the ethics, business and technical content aimed at maintaining, improving, or expanding the skills and knowledge relevant to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

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

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 15 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of five hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of ten hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than five of the ten hours may be obtained from such activity in any one organization;

(e) unlimited hours may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

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

(6) If a licensee exceeds the 30 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 15 hours of qualified continuing professional education into the next two year period.

(7) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(8) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete 30 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

(9) The Division may waive continuing education in accordance with Section R156-1-308d.

R156-22-305. Inactive Status.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the professional engineer, professional structural engineer or professional land surveyor licensee shall not engage in the profession for which the license was issued while the license is on inactive status except to identify the individual as an inactive licensee.

(2) A license, prior to being placed on inactive status, shall be active and in good standing.

(3) Inactive status licensees are not required to fulfill the continuing education requirement.

(4) In addition to the requirements in Subsection R156-1-305(6) to reactivate an inactive license, a licensee shall provide documentation that the licensee, within two years of the license being reactivated, completed 30 hours of continuing education.

(5) Prior to a license being reactivated, a licensee shall meet the requirements for license renewal.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an

employee, subordinate, associate or drafter; or

(4) failing, in the performance of services for clients, employers, and customers to be cognizant that the first and foremost responsibility is to the public welfare;

(5) failing to hold paramount the duty to safeguard life, health, property and public welfare by approving and sealing only those design documents and surveys that conform to accepted engineering and surveying standards;

(6) failing to notify an employer, client, or other such authority as may be appropriate when the licensee's professional judgment is overruled under circumstances where the life, health, property, or welfare of the public is endangered.

(7) failing to be objective and truthful, or failing to include all relevant and pertinent information, in professional reports, statements, or testimony;

(8) expressing a professional opinion publicly when it is not founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter;

(9) issuing statements, criticisms, or arguments on technical matters in circumstances where such statements, arguments or criticisms, are inspired or paid for by interested parties, unless the licensee explicitly identifies the interested parties on whose behalf the licensee is speaking and reveals any interest the licensee has in the matters;

(10) permitting the use of the licensee's name or the licensee's firm name by, or associating in business ventures with, any person or firm that is engaging in fraudulent or dishonest business or professional practices;

(11) having knowledge of possible violations of any of these rules of professional conduct, and failing to provide the Division with the information and assistance necessary to make a final determination of such violation;

(12) accepting and undertaking assignments when not qualified by education, experience and training, or that exceed the licensee's competency and ability in the specific technical fields of engineering or surveying involved;

(13) affixing a signature or seal to any plans or documents dealing with subject matter in which the licensee lacks competence, or to any such plan or document not prepared under the licensee's responsible charge;

(14) failing to ensure, when accepting assignments for coordination of an entire project, that each design segment is signed and sealed by the licensee responsible for preparation of that design segment;

(15) revealing facts, data or information obtained in a professional capacity without the prior consent of the client or employer, except as authorized or required by law;

(16) soliciting or accepting gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients;

(17) failing to make full prior disclosures to employers or clients of potential conflicts of interest or other circumstances that could influence or appear to influence the licensee's judgment or the quality of the licensee's service;

(18) accepting compensation, financial or otherwise, from more than one party for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties;

(19) soliciting or accepting a professional contract from a government body with respect to which a principle or officer of the licensee's organization serves as a member;

(20) if serving as a member, advisor, or employee of a government body or department while also serving as the principal or employee of a private concern, participating in decisions with respect to professional services offered or provided by the private concern to the governmental body with respect to which the licensee services;

(21) falsifying or permitting representation or exaggeration of the academic or professional qualifications, the degree of

responsibility in prior assignments, or the complexity of prior assignments, of the licensee or the licensee's associates;

(22) misrepresenting pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments, in presentations incident to the solicitation of employment or business;

(23) offering, giving, soliciting, or receiving, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure work, or making any political contribution with the intent to influence the award of a contract by public authority;

(24) attempting to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees, or indiscriminately criticizing another licensee's work;

(25) receiving gratuities from material, product, or services suppliers for specifying or endorsing their goods or services; and

(26) failing to fully disclose and obtain consent in writing of the principal employer and all interested parties prior to accepting or engaging in supplemental professional engineering, structural engineering, or land surveying services.

R156-22-503. Administrative Penalties.

(1) In accordance with Subsection 58-22-503, the following fine schedule shall apply to citations issued to individuals licensed under Title 58, Chapters 1 and 22:

TABLE
FINE SCHEDULE

Violation	First Offense	Second Offense
58-1-501(1)(a)	\$ 800.00	\$1,600.00
58-1-501(1)(b)	\$1,000.00	\$2,000.00
58-1-501(1)(c)	\$1,000.00	\$2,000.00
58-1-501(1)(d)	\$1,000.00	\$2,000.00
58-22-501(1)	\$ 800.00	\$1,600.00
58-22-501(2)	\$ 800.00	\$1,600.00
58-22-501(3)	\$ 800.00	\$1,600.00
58-22-501(4)	\$ 800.00	\$1,600.00
58-22-501(5)	\$ 800.00	\$1,600.00

(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 58-22-503(1)(i).

(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) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: professional land surveyors, professional engineers, professional structural engineers

April 8, 2014

58-22-101

Notice of Continuation June 25, 2012

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-42a. Occupational Therapy Practice Act Rule.
R156-42a-101. Title.

This rule is known as the "Occupational Therapy Practice Act Rule".

R156-42a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 42a, as used in Title 58, Chapters 1 and 42a, or this rule:

(1) "General supervision", as used in Section 58-42a-304 and Subsection R156-42a-302b(2), means the supervising occupational therapist is:

(a) present in the area where the person supervised is performing services; and

(b) immediately available to assist the person being supervised in the services being performed.

(2) "Consult with the attending physician", as used in Subsection 58-42a-501(6), means that the occupational therapist will consult with the attending physician when an acute change of patient condition affects the occupational therapy services being performed.

(3) "Physical agent modalities", as used in Subsection 58-42a-102(9)(g), means specialized treatment procedures that produce a response in soft tissue through the use of light, water, temperature, sound or electricity such as hot packs, ice, paraffin, and electrical or sound currents.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 42a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-42a-502.

R156-42a-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 42a.

R156-42a-104. Organization - Relationship to Rule 156-1.

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

R156-42a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 42a is established by rule in R156-1-308a.

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

R156-42a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) delegating supervision, or occupational therapy services, care or responsibilities not authorized under Title 58, Chapter 42a or this rule;

(2) engaging in or attempting to engage in the use of physical agent modalities when not competent to do so by education, training, or experience;

(3) failing to provide general supervision as set forth in Title 58, Chapter 42a and this rule;

(4) failing to cosign COTA discharge documentation within 30 days pursuant to R156-42a-601; and

(5) violating any provision of the American Occupational Therapy Association Code of Ethics, last amended April 2005, which is hereby adopted and incorporated by reference.

R156-42a-601. Practice Standards.

A certified occupational therapist assistant (COTA), after consultation with the supervising occupational therapist (OT), may discharge an individual from on-going service only if there is no evaluation component associated with the discharge from service. The supervising OT shall co-sign the appropriate

documentation within 30 days.

KEY: licensing, occupational therapy

April 21, 2014

Notice of Continuation January 21, 2014

58-1-106(1)(a)

58-1-202(1)(a)

58-42a-101

**R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-101. Title.**

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)(p) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(p) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(17), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(4) "Incidental", as used in Subsection 58-55-102(39), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract and does not include performance of any electrical or plumbing work unless specifically included in the specialty classification description under Subsection R156-55a-301(2).

(5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(6) "Mechanical", as used in Subsections 58-55-102(21) and 58-55-102(32), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(7) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

(9) "School" means a Utah school district, applied technology college, or accredited college.

(10) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55a-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.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(22).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(21) and pursuant to Subsection 58-55-102(21)(b) is clarified as follows:

(a) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 15A-1-302(8) and constructed in accordance with Section 15A-1-304. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(32) and pursuant to Subsection 58-55-102(32) is clarified as follows:

(a) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a

temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(22).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(21) or 58-55-102(32).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy. The General Electrical Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and replacement of photovoltaic cell panels and related components. Wiring, connections and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by an S200 General Electrical Contractor or S201 Residential Electrical Contractor. This classification is not required to install stand alone solar systems that do not tie into premises wiring or into the electrical utility, such as signage or street or

parking lighting.

A contractor who obtained this classification of licensure between January 1, 2009 and April 25, 2011 and who holds an active license may, in addition to the above, perform the following activities as part of the scope of practice under this subsection: fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline. The General Plumbing Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto in a closed system not connected to the culinary water system. Notwithstanding the foregoing, where water delivery for the closed system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, a contractor licensed under this subsection may connect the closed system to the backflow prevention device, which must be installed by an actively licensed plumber.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work. This classification includes the above work for geo thermal systems.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and

maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of rain gutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementitious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementitious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls

which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems. The HVAC Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. This classification does not include work on heat recovery ventilation or makeup air components which must be performed by an HVAC Contractor and does not include electrical wiring which must be performed by an Electrical Contractor.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt

overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural

subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

- (i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and
- (ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3) The scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subclassifications:

TABLE I

Primary Classification	Included subclassifications
S200	S201, S202
S210	S211, S212, S213, S214, S215, S216, S217
S220	S221, S222
S230	S231
S260	S261, S262, S263
S270	S272, S273
S290	S291, S292, S293, S294
S320	S321, S322, S323
S350	S351, S352, S353, S354
S420	S421
S440	S441
S490	S491

(4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

- (a) sandblasting;
- (b) pumping services;
- (c) tree stump or tree removal;
- (d) installation within a building of communication cables including phone and cable television;
- (e) installation of low voltage electrical as described in R156-55b-102(1);
- (f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;
- (g) building and window washing, including power washing;
- (h) central vacuum systems installation;
- (i) concrete cutting;
- (j) interior decorating;
- (k) wall paper hanging;
- (l) drapery and blind installation;
- (m) welding on personal property which is not attached;
- (n) chimney sweepers other than repairing masonry;
- (o) carpet and vinyl floor installation; and

(p) artificial turf installation.

(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:

- (a) lead removal regulated by the Department of Environmental Quality;
- (b) asbestos removal regulated by the Department of Environmental Quality; and
- (c) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), the qualifier for an applicant for licensure as a contractor or the qualifier for an applicant for licensure as a construction trades instruction facility shall pass the following examinations:

- (a) the Utah Contractor Business - Law Examination; and
- (b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

- E100 - General Engineering Contractor
- B100 - General Building Contractor
- B200 - Modular Unit Installation Contractor
- R100 - Residential and Small Commercial Contractor
- R101 - Residential and Small Commercial Non Structural Remodeling and Repair Contractor
- R200 - Factory Built Housing Contractor
- I101 - General Engineering Trades Instruction Facility
- I102 - General Building Trades Instruction Facility
- I105 - Mechanical Trades Instruction Facility
- S211 - Boiler Installation Contractor
- S212 - Irrigation Sprinkling Contractor
- S213 - Industrial Piping Contractor
- S215 - Solar Thermal Systems Contractor
- S216 - Residential Sewer Connection and Septic Tank Contractor

- S220 - Carpentry Contractor
- S222 - Overhead and Garage Door Contractor
- S230 - Siding Contractor
- S240 - Glass and Glazing Contractor
- S250 - Insulation Contractor
- S260 - General Concrete Contractor
- S270 - General Drywall and Plastering Contractor
- S280 - General Roofing Contractor
- S290 - General Masonry Contractor
- S293 - Marble, Tile and Ceramic Contractor
- S300 - General Painting Contractor
- S310 - Excavation and Grading Contractor
- S320 - Steel Erection Contractor
- S321 - Steel Reinforcing Contractor
- S330 - Landscaping Contractor
- S340 - Sheet Metal Contractor
- S350 - HVAC Contractor
- S351 - Refrigerated Air Conditioning Contractor
- S353 - Warm Air Heating Contractor
- S360 - Refrigeration Contractor
- S370 - Fire Suppression Systems Contractor
- S380 - Swimming Pool and Spa Contractor
- S390 - Sewer and Waste Water Pipeline Contractor
- S410 - Pipeline and Conduit Contractor
- S440 - Sign Installation Contractor
- S450 - Mechanical Insulation Contractor
- S490 - Wood Flooring Contractor
- S600 - General Stucco Contractor

(3) The passing score for each examination is 70%.

(4) Qualifications to sit for examination.

- (a) An applicant applying to take any examination

specified in this Section must sign an affidavit verifying that an applicant has completed the experience required under Subsection R156-55a-302b.

(5) "Approved trade classification specific examination" means a trade classification specific examination:

(a) given, currently or in the past, by the Division's contractor examination provider; or
 (b) given by another state if the Division has determined the examination to be substantially equivalent.

(6) 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.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) Unless otherwise provided in this rule, two years of experience shall be lawfully performed within the 10-year period preceding the date of application under the general supervision of a contractor licensed in the classification applied for or a substantially equivalent classification, and shall be subject to the following:

(i) If the experience was completed in Utah, it shall be:

(A) completed while a W-2 employee of a licensed contractor; or

(B) completed while working as an owner of a licensed contractor, which has for all periods of experience claimed, employed a qualifier who performed the duties and served in the capacities specified in Subsection 58-55-304(4) and in Subsection R156-55a-304.

(ii) If the experience was completed outside of the state of Utah, it shall be:

(A) completed in compliance with the laws of the jurisdiction in which the experience is completed; and

(B) completed with supervision that is substantially equivalent to the supervision that is required in Utah.

(iii) Experience may be determined to be substantially equivalent if lawfully obtained in a setting which has supervision of qualified persons and an equivalent scope of work, such as performing construction activities in the military where licensure is not required.

(b) Unless otherwise provided in this rule, all experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in Subsection (2)b, experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractor's license.

(f) If the applicant's qualifying experience is outdated but has previously been approved in the state of Utah, a passing score on the trade examination and the laws and rules examination obtained within the one-year period preceding the date of application will requalify the applicant's experience.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) One of the required two years of experience shall be in a supervisory or managerial position.

(b) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have

one year of experience credited towards the supervisory or managerial experience requirement.

(c) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(3) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(4) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsection (1), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

(5) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsection (1), an applicant shall hold a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP). Experience completed prior to the effective date of this rule does not need to be performed under the supervision of a licensed contractor. Experience completed after the effective date of this rule must be performed under the supervision of a licensed contractor who has authority to practice radon mitigation.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I103 Electrical Trades Instruction Facility shall also be licensed as a master electrician or a residential master electrician.

(2) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I104 Plumbing Trades Instruction Facility shall also be licensed as a master plumber or a residential master plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least \$100,000 for each incident and \$300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a;

and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

R156-55a-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a(1).

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term except that for the renewal term. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing education" is defined as construction codes, construction laws, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this Section and shall be one of the following:

- (i) a recognized accredited college or university;
- (ii) a state or federal agency;
- (iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the construction trades.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate that contains the following information:

- (i) the date of the course;
- (ii) the name of the course provider;
- (iii) the name of the instructor;
- (iv) the course title;
- (v) the hours of continuing education credit and type of credit (core or professional);
- (vi) the attendee's name; and
- (v) the signature of the course provider.

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7 and 58-55-303(6), which is completed by an employee or owner of a contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to

the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs that meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs that have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55a-304. Contractor License Qualifiers.

(1) The capacity and material authority specified in Subsection 58-55-304(4) is clarified as follows:

(a) Except as allowed in Subsection (b), the qualifier must receive remuneration for work performed for the contractor licensee for not less than 10 hours of work per week;

(i) If the qualifier is an owner of the business, the remuneration may be in the form of owner's profit distributions or dividends with a minimum ownership of 20 percent of the contractor licensee.

(ii) If the qualifier is an officer or manager of the contractor licensee, the remuneration must be in the form of W-2 wages.

(b) The 10 hour minimum in Subsection (a) may be reduced if the total of all hours worked by all owners and employees is less than 50 hours per week, in which case the minimum may not be less than 20 percent of the total hours of work performed by all owners and employees of the contractor.

(2) Construction Trades Instruction Facility Qualifier. In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instruction facilities.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance,

with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the Division.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(F), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than \$1,000 but less than \$3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has public liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least \$100,000 for each incident and \$300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-302(10)(c), 58-55-306(2), 58-55-306(4)(b), and 58-55-102(19), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, or any owner, including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report that meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

(e) any of the factors listed in Subsection R156-1-302 that may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee and any owners; and

(h) any history of prior entities owned or operated by the applicant, the licensee, or any owner that have failed to maintain financial responsibility.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as a teacher for a school licensed as a construction trades instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instruction facility shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

- (a) general gas appliance installation codes;
- (b) venting requirements;
- (c) combustion air requirements;
- (d) gas line sizing codes;
- (e) gas line approved materials requirements;
- (f) gas line installation codes; and
- (g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

- (a) Federal Bureau of Apprenticeship Training;
- (b) Utah college apprenticeship program; and
- (c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

- (a) name of the program provider;
- (b) name of the approved program;
- (c) name of the certificate holder;
- (d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-309. Reinstatement Application Fee.

The application fee for a contractor applicant who is applying for reinstatement more than two years after the expiration of licensure, who has been engaged in unauthorized practice of contracting following the expiration of the applicant's license, shall be the current license application fee normally required for a new application rather than the reinstatement fee provided under R156-1-308g(3)(d).

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Exception: A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter; and

(3) failing, upon request by the Division, to provide proof of insurance coverage within 30 days.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

Violation	FIRST OFFENSE	
	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	\$ 500.00	N/A
58-55-501(1)	\$ 500.00	\$ 500.00
58-55-501(2)	\$ 500.00	\$ 800.00
58-55-501(3)	\$ 800.00	\$1,000.00
58-55-501(9)	\$ 500.00	\$ 500.00
58-55-501(10)	\$ 800.00	\$1,000.00

58-55-501(12)	N/A	\$ 500.00
58-55-501(14)	\$ 500.00	N/A
58-55-501(19)	\$ 500.00	N/A
58-55-501(21)	\$ 500.00	\$ 500.00
58-55-501(24)	\$ 500.00	N/A
58-55-501(25)	\$ 500.00	N/A
58-55-504(2)	\$ 500.00	N/A

SECOND OFFENSE

58-55-308(2)	\$1,000.00	N/A
58-55-501(1)	\$1,000.00	\$1,500.00
58-55-501(2)	\$1,000.00	\$1,500.00
58-55-501(3)	\$1,600.00	\$2,000.00
58-55-501(9)	\$1,000.00	\$1,000.00
58-55-501(10)	\$1,600.00	\$2,000.00
58-55-501(12)	N/A	\$1,000.00
58-55-501(14)	\$1,000.00	N/A
58-55-501(19)	\$1,000.00	N/A
58-55-501(21)	\$1,000.00	\$1,000.00
58-55-501(24)	\$1,000.00	N/A
58-55-501(25)	\$1,000.00	N/A
58-55-504(2)	\$1,000.00	N/A

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence presented.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for the Certification of Crane Operators;

(2) a certification issued by the Operating Engineers Certification Program formerly known as the Southern California Crane and Hoisting Certification Program; or

(3) a certification issued by the Crane Institute of America.

R156-55a-602. Contractor License Bonds.

Pursuant to the provisions of Subsections 58-55-306(1)(b), 58-55-306(4)(c) and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

(1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) The financial history of the applicant, licensee, or any owner, as outlined in Section R156-55a-306, may be reviewed in determining the bond amount required under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be \$50,000 for the E100 or B100 classification of licensure; \$25,000 for the R100 classification of licensure; or \$15,000 for other classifications. A higher amount may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).

(6) The amount of the bond specified under Subsection R156-55a-602(5) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(7) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602(5) if:

(a) the contractor demonstrates by clear and convincing evidence that:

(i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

(b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing

January 21, 2014 58-1-106(1)(a)
Notice of Continuation October 4, 2011 58-1-202(1)(a)
 58-55-101
 58-55-308(1)(a)
 58-55-102(39)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-60. Mental Health Professional Practice Act Rule.
R156-60-101. Title.**

This rule is known as the "Mental Health Professional Practice Act Rule."

R156-60-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the 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 April 8, 2014

58-1-202(1)(a)

58-60-101

R277. Education, Administration.**R277-102. Adjudicative Proceedings.****R277-102-1. Definitions.**

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

B. "Default" means the failure of a party to an administrative proceeding to meet the requirements or timelines of the proceeding.

C. "Presiding officer" means, in addition to the definition of 63G-4-103(1)(h)(i), the Chair of the Board or any person designated to serve as the presiding officer.

D. "State Superintendent" means the State Superintendent of Public Instruction.

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

R277-102-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 63G-4-203 which directs agencies to make rules regarding adjudicative proceedings following the general designation of Board hearings as informal.

B. The purpose of this rule is to specify how adjudicative proceedings are conducted before the Board. All procedures shall be consistent with Title 63G, Chapter 4. This rule does not govern Board actions under Sections 63G-4-102(2)(a),(d),(g),(j),(l), and (p).

R277-102-3. Commencement of Adjudicative Proceedings.

A. Any party to an initial determination made by the Board may initiate an adjudicative proceeding under the Administrative Procedures Act and this rule by filing a request for Board action on a form, Request for Board Action, provided by the Board, or by submitting in writing the information required on the form.

B. Each Notice of Board Action and Request for Board Action filed is assigned a number consisting of the year in which the notice or request is filed and another number showing its numerical position among the hearings filed during the year.

R277-102-4. Designation of Adjudicative Proceedings as Formal or Informal.

All proceedings conducted before the Board are initially designated as informal. The presiding officer designated for the proceeding may convert an informal proceeding to a formal proceeding and vice versa under Section 63G-4-202(3).

R277-102-5. Procedures for Informal Adjudicative Proceedings.

A. The Board may hold a hearing if a request for a hearing is received by the Board within 20 business days of Board action.

B. The Board shall make appropriate arrangements for the hearing including:

- (1) determining the date of the hearing;
- (2) designating a Board member, USOE employee or another individual as a hearing officer;
- (3) designating the hearing location and other necessary information; or
- (4) establishing timelines consistent with Section 63G-4-301.

C. The Board may delegate the hearing arrangements and procedures to a hearing officer.

D. The Board may, on a case by case basis, determine if an informal hearing may be held electronically.

E. The Board shall maintain a record of all aspects of an informal adjudicative proceeding.

F. The Board shall issue a decision no later than 120 days from the receipt of the Request for Agency Action and following

the conclusion of an informal proceeding.

R277-102-6. Procedures for Formal Adjudicative Proceedings.

A. The Board may designate an adjudicative proceeding as formal following a Request for Board Action.

B. If the Board designates a proceeding as formal, the Board may add any of the following procedures, as appropriate, to the hearing procedures designated in R277-102-5:

- (1) responsive pleadings;
- (2) discovery for parties;
- (3) the right to subpoena witnesses;
- (4) intervention by third parties;
- (5) an electronic recording of the complete proceeding; and
- (6) a written final decision consistent with Section 63G-4-208(1).

C. For both informal and formal adjudicative proceedings, the Board-designated presiding officer or hearing officer shall have considerable discretion in managing and making procedural and evidentiary decisions throughout the hearing process.

R277-102-7. Default.

A. A presiding officer or hearing officer designated for a formal or informal hearing may recommend a default to the Board consistent with deadlines set by the presiding officer and the provisions of Section 63G-4-209.

B. A defaulted party may seek to have a default set aside consistent with Section 63G-4-209(3) and timelines set by the presiding officer.

R277-102-8. Recommendation to Board.

A. A written hearing report, including findings of fact and conclusions of law, and presiding officer decision shall be submitted to the Board as a recommendation.

B. The Board's final decision following acceptance of written findings is the final administrative decision on the issue, subject to a Request for Reconsideration under Section 63G-4-302.

KEY: administrative procedures, rules and procedures

February 7, 2012 63G-4-101 through 63G-4-302

Notice of Continuation April 4, 2014 63G-4-405

63G-4-503

53A-1-401(3)

Art X Sec 3

R277. Education, Administration.**R277-105. Recognizing Constitutional Freedoms in the Schools.****R277-105-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Conscience" means a standard based upon learned experiences, a personal philosophy or system of belief, religious teachings or doctrine, an absolute or external sense of right and wrong which is felt on an individual basis, a belief in an external Absolute, or any combination of the foregoing.
- C. "Discretionary time" for students means school-related time that is not instructional time. It includes free time before and after school, during lunch and between classes or on buses, and private time before athletic and other events or activities.
- D. "District" or "school district" means a public school district, the Utah Schools for the Deaf and the Blind, or an Applied Technology Center.
- E. "Exercise of religious freedom" means the right to choose or reject religious, theistic, agnostic, or atheistic convictions and to act upon that choice.
- F. "Guardian" means a person who has been granted legal guardianship of a child in accordance with state law.
- G. "Instructional time" means time during which a school is responsible for a student and the student is required or expected to be actively engaged in a learning activity. It includes instructional activities in the classroom or study hall during regularly scheduled hours, required activities outside the classroom, and counseling, private conferences, or tutoring provided by school employees or volunteers acting in their official capacities during or outside of regular school hours.
- H. "Parent" means a biological or adoptive parent who has legal custody of a child.
- I. "USOE" means the Utah State Office of Education.

R277-105-2. Authority and Purpose.

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board. The rule is based upon the First Amendment to the Constitution of the United States; Article I, Section 4, Article III, Sections 1 and 4, and Article X, Section 1 of the Utah State Constitution which speak of rights of conscience, perfect toleration of religious sentiment, the free exercise of religion, and prohibitions against the establishment of religion or the imposition of sectarian control in the schools; Section 53A-13-101(4), which directs that curriculum promoting respect for parents and home, morality, qualities of character and respect for and an understanding of the Constitutions of the United States and the State of Utah be taught in connection with regular school work; and Sections 53A-13-101.1 through 53A-13-101.3, which provide direction for the USOE and school districts regarding curriculum, freedom of conscience, exercise of religious freedoms, and student expression.

B. The purpose of this rule is to help public school officials to protect and accommodate individual rights in the operation of Utah's schools.

R277-105-3. Interpretive Context for the Rule.

A. The Board recognizes the importance of religious belief and practice and other expressions of conscience in the lives of many people, the critical role that such beliefs have played in the development of societies and cultures throughout the world, and the influence that these beliefs continue to have on concepts and interpretations relating to school curricula. The Board also recognizes that Utah is becoming a pluralistic society with an increasing diversity of peoples and beliefs, and that this diversity will require the development of greater tolerance and understanding among the people of the state.

B. The Constitution of Utah prohibits the use of the

powers of government to encourage or discourage religious beliefs or practices, or to repress rights of conscience. Given their unique relationship to children attending the public schools, school officials must be particularly careful to remain neutral in matters relating to religion, while striving to accommodate the religious beliefs and practices and the freedom of conscience of students and their parents.

C. Court decisions interpreting Constitutional establishment clause provisions are a commonly used source for information about acceptable relationships between government and religion. The Board has attempted to reflect applicable rulings in the development of this rule. Because of the relative absence of court interpretations concerning the meaning of the Utah Constitution as applied to the public schools, this rule places primary reliance upon interpretations of related clauses in the First Amendment to the United States Constitution. In applying the rule, school officials may presume that any accommodation of religion which would be permissible under applicable rulings interpreting the First Amendment to the United States Constitution, and has not been prohibited in a decision interpreting Utah law which is binding upon the Utah public education system, is permissible in the schools of the State of Utah.

R277-105-4. Creation and Implementation of Curriculum.

A. A study, performance, or display which includes examination of or presentations about religion, religious thought or expression, or the influence thereof in music, art, literature, law, politics, history, or any other portion of the curriculum may be undertaken in the public schools so long as it is designed to achieve permissible educational objectives and is presented within the context of the approved curriculum.

B. The objective study of comparative religions is permissible, but no religious tenet, belief, or denomination may be given inappropriate emphasis.

C. No aspect of cultural heritage, political or moral theory, or societal value may be either included or excluded from consideration in the public schools primarily because it explicitly or implicitly contains theistic, agnostic, or atheistic assumptions.

D. An analysis of religion, deity, an absolute moral principle, or any other concept that may contain a theistic, agnostic, or non-theistic assumption, may be presented when included as an appropriate component or aspect of a broader study, display, presentation, or discussion regarding cultural heritage, political theory, moral theory or a societal value.

R277-105-5. Requests for Waiver of Participation in School Activities.

A. A parent, a legal guardian of a student, or a secondary student may request a waiver of participation in any portion of the curriculum or school activity which the requesting party believes to be an infringement upon a right of conscience or the exercise of religious freedom in any of the following ways:

(1) it would require an affirmation or denial of a religious belief or right of conscience;

(2) it would require participation in a practice forbidden by a religious belief or practice, or right of conscience; or

(3) it would bar participation in a practice required by a religious belief or practice, or right of conscience.

B. A claimed infringement under Subsection A must rise to a level of belief that the requested conduct violates a superior duty which is more than personal preference.

C. If a minor student seeks a waiver of participation under Subsection A, the school shall promptly notify the student's parent or legal guardian about the student's choice. In the event of a conflict, a parent's or legal guardian's wishes shall prevail over those of a minor student.

D. A parent, guardian, or secondary student requesting a

waiver of participation under Subsection A may also suggest an alternative that requires reasonably equivalent performance by the student of the objective of the curriculum or activity that is believed to be objectionable.

E. In responding to a request under Subsection A, the school shall:

- (1) waive participation by the student in the objectionable curriculum or activity;
- (2) provide a reasonable alternative as suggested by the parent or secondary student, or other reasonable alternative developed in consultation with the requesting party, that will achieve the objectives of the portion of the curriculum or activity for which waiver is sought; or
- (3) deny the request.

F. A request for waiver of required participation shall not be denied unless the responsible school official finds that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest.

G. In responding to a request under Subsection A, the school shall not require an affected student to accept a sub-standard or educationally deficient alternative that is unreasonably burdensome.

H. Permitting the submission of requests for participation waivers, and the provision of reasonable alternatives, is intended to facilitate appropriate protection and accommodation of a requesting party's asserted right of conscience or exercise of religious freedom, and shall not be considered to be an attempt by a school official to endorse, promote or disparage a particular religious or non-religious viewpoint.

R277-105-6. Student Expression.

A. A student participating in a classroom discussion, presentation, or assignment, or in a school sponsored activity, shall not be prohibited from expressing personal beliefs of any kind nor be penalized for so doing, unless the conduct:

- (1) unreasonably interferes with order or discipline;
- (2) threatens the well-being of persons or property; or
- (3) violates concepts of civility or propriety appropriate in a school setting.

B. Students may initiate and conduct voluntary religious activities or otherwise exercise their religious freedom on school grounds during discretionary time. Individuals not currently enrolled as students in the school may neither conduct nor regularly attend the activities. School officials may neither conduct nor actively participate in the activities, but may be present as necessary to ensure proper observance of school rules and may limit or prohibit student activities under this section which:

- (1) unreasonably interfere with the ability of school officials to maintain order and discipline;
- (2) threaten the well-being of persons or property; or
- (3) violate concepts of civility or propriety appropriate in a school setting.

R277-105-7. Religious Services and Church-Owned Facilities.

A. Public school officers and employees may neither authorize nor encourage prayer or devotional activities in connection with any class, program, presentation or other student activity which is under the control, direction, or sponsorship of a public school or school district. This Subsection shall not act to restrict student rights under R277-105-6.

B. No school employee or student may be required to attend or participate in any religious service, whether in an individual capacity or as a member of a performing group, regardless of where or when the service is held. No penalty may

be assessed for failure to attend or perform in such an activity.

C. Subject to the requirements of Subsection R277-105-5, students who are members of performing groups such as school choirs may be required to rehearse or otherwise perform in a church-owned or operated facility if the following conditions are met:

- (1) the performance is not part of a religious service;
- (2) the activity of which the performance is a part is neither intended to further a religious objective nor under the direction of a church official; and
- (3) the activity is open to the general public.

D. Students may voluntarily attend and perform during a religious service as individuals or as members of a group, provided all arrangements are made by students or non-school personnel.

E. Religious activities may be conducted on the same basis as any other non-school activity outside of regular school hours.

F. Subject to the requirements of R277-105-5, students may be required to visit church-owned facilities when religious services are not being conducted if the visit is intended solely for the purpose of pursuing permissible educational objectives such as those relating to art, music, architecture, or history.

R277-105-8. Expressions of Personal Belief by Employees.

A. An employee's rights relating to voluntary religious practices and freedom of speech do not include proselytizing of any student regarding atheistic, agnostic, sectarian, religious, or denominational doctrine while the employee is acting in the employee's official capacity, nor may an employee attempt to use his position to influence a student regarding the student's religious beliefs or lack thereof.

B. Even though acting in an official capacity, an employee may respond in an appropriate and restrained manner to a spontaneous question from a student regarding the employee's personal belief or perspective. Nevertheless, because of the special position of trust held by school employees, employees may not advocate or encourage acceptance of a belief or perspective; but may, by exercising due caution, explain or define personal religious beliefs or perspectives, or opinions about the rightfulness or wrongfulness of his/her own, or any other person's religious beliefs or lack thereof.

R277-105-9. Mandatory Responsibilities of School Districts.

A. Supervision and Training

(1) Local school boards and their employees shall cooperate and share responsibilities in implementing Sections 53A-13-101 et seq. U.C.A.

(2) Each local school board shall adopt and implement policies and training in accordance with this rule and the provisions of Sections 53A-13-101 et seq. U.C.A., to include the following:

(a) the person to whom a request for waiver of participation or substitution of another activity is to be directed;

(b) how notice is to be given to the parent of a minor secondary student who makes a request pursuant to an exercise of freedom of conscience or exercise of religious freedom under Sections 53A-13-101.2 and 53A-13-101.3 U.C.A. (1993);

(c) how appeals may be taken from a decision to require participation in any curriculum or activity after a request to either waive participation or allow substitution of another activity has been made by a parent, legal guardian or secondary student, including suspension of participation requirements until a ruling on the appeal is issued;

(d) establish procedures whereby students are not compelled to participate in any curriculum or activity after a request to waive participation or allow substitution of another activity has been submitted unless it is determined that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational

objective in furtherance of a compelling governmental interest;
and

(e) establish procedures whereby any portion of any curriculum or activity that is repeatedly alleged to interfere with the rights of conscience or exercise of religious freedom of students, parents or legal guardians shall be evaluated to determine whether the educational objectives could be achieved by less intrusive means.

KEY: freedom of religion, public education
1994

Art X Sec 3
Notice of Continuation April 4, 2014 53A-13-101(4)
53A-13-101.1 through 53A-13-101.3

R277. Education, Administration.

R277-117. Utah State Board of Education Protected Documents.

R277-117-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Request for proposal or RFP" means an official application or offer for services provided to the Board/USOE in response to an advertised opportunity to provide goods or services.
- C. "RFP-like document" means a grant application or a proposal of any kind offered in response to a Board request for applicants to provide goods or services to public education.
- D. "USOE" means the Utah State Office of Education.

R277-117-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1-402(1)(c)(iii) which requires the Board to set minimum standards for alternative and pilot programs, Section 53A-1-402(1)(c)(iv) which requires the Board to set minimum standards for curriculum and instruction requirements, Section 53A-1-402(1)(e)(i) which requires the Board to set minimum standards for school productivity and cost effectiveness measures, Section 63G-2-305(6) which allows the Board to protect records if the disclosure would impair government procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity consistent with other provisions of Section 63G-2-305 and Section 63G-2-309, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purposes of this rule:

- (1) is to maintain fairness, objectivity, efficiency and timeliness, as the Board fulfills constitutional and statutory directives to and responsibilities for Utah public schools and public school programs.
- (2) to protect the integrity of proposal or bidding processes in order to provide fair and equal opportunities for vendors and service providers.

R277-117-3. Board Procedures in Preparing and Releasing RFP and RFP-like Proposals or Grants.

A. The Board or USOE staff acting for the Board shall act consistent with Section 63G-6-101 et seq. in advertising and soliciting services for Utah public schools unless the Board is specifically exempt from the procurement process in which case the Board shall continue to protect the integrity of a competitive process with the provisions of this rule.

B. The Board shall develop RFPs or RFP-like requests using the plain language of state statute(s) or federal regulation(s) that directs the Board to seek competitive or non-competitive applications or proposals for services that are funded through a public education appropriation to the Board.

C. The USOE, acting for the Board, shall use legislative intent to develop RFPs or RFP-like requests only when legislative intent is specifically written in state law, is passed by the State Legislature and is specific to the RFP in development.

D. The Board may request written information from legislators or legislative staff to explain the intent of individual bill sponsors; all written information received under R277-117-3 shall be public information.

E. Board members or USOE staff may seek at the Board's or staff's sole discretion, additional information and expertise to facilitate the development of an RFP. All information gathered under this provision shall be public information, including the source of the information, unless the records are specifically protected under Section 63G-2-305(17).

F. The Board may allow for public comment at Board meetings or Board committee meetings to discuss the legislative

intent for RFPs.

R277-117-4. Confidentiality of RFP and RFP-like Proposals or Grants Prior to Release by the USOE.

A. The RFP or RFP-like proposal shall be a protected document under Section 63G-2-305(22) until the proposal is released by the USOE or a commercial distributor of an RFP specifically commissioned by the USOE.

B. USOE staff shall stamp or mark all draft RFP documents DRAFT until the final version of an RFP or RFP-like document is officially released for public review and response.

C. If an RFP process for which the Board is responsible is compromised, as determined by a vote of the Board if necessary, the proposal shall be void and the USOE shall begin a new RFP process.

D. A USOE employee who intentionally violates the provisions of this rule may be subject to employment discipline up to and including termination.

KEY: RFPs, grants, confidentiality

April 7, 2014 53A-1-402(1)(c)(iii)
Notice of Continuation February 13, 2014 53A-1-402(1)(c)(iv)
53A-1-402(1)(e)(i)
53A-1-401(3)

R277. Education, Administration.**R277-400. School Emergency Response Plans.****R277-400-1. Definitions.**

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

B. "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance which could reasonably endanger the safety of school children or disrupt the operation of the school.

C. "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect school property, or regulate the operation of schools during an emergency occurring within an LEA or a school.

D. "Emergency Response Plan" means a plan developed by an LEA or school to prepare and protect students and staff in the event of school violence emergencies.

E. "LEA" means local education agency, including local school boards/ public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

R277-400-2. 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 purpose of this rule is to establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and LEAs in the event of school emergencies as defined in R277-400-1B. This rule also directs LEAs to develop prevention, intervention, and response measures and to prepare staff and students to respond promptly and appropriately to school emergencies.

R277-400-3. Establishing LEA Emergency Preparedness and Emergency Response Plans.

A. By July 1 of each year, each LEA shall certify to the Board that the LEA emergency preparedness and emergency response plan has been practiced at the school level, presented to and reviewed by its teachers, administrators, students and their parents, local law enforcement, and public safety representatives consistent with Section 53A-3-402(18).

B. As a part of an LEA's annual application for state or federal Safe and Drug Free School funds, the LEA shall reference its Emergency Response plan.

C. The plan(s) shall be designed to meet individual school needs and features. An LEA may direct schools within the LEA to develop and implement individual plans.

D. The LEA shall appoint a committee to prepare plan(s) or modify existing plan(s) to satisfy this rule. The committee shall consist of appropriate school and community representatives which may include school and LEA administrators, teachers, parents, community and municipal governmental officers, and fire and law enforcement personnel. Governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels shall be included on the committee.

E. Each LEA shall review the plan(s) at least once every three years.

F. The Board shall develop Emergency Response Plan models under Section 53A-3-402(18)(d).

R277-400-4. Notice and Preparation.

A. A copy of the plan(s) for each school within an LEA shall be filed in the LEA superintendent's or charter school director's office.

B. At the beginning of each school year, parents and staff shall receive a written notice of relevant sections of LEA and

school plans which are applicable to that school.

C. Each school shall designate an Emergency Preparedness/Emergency Response week prior to April 30 of each school year. Community, student, teacher awareness, or training, such as those outlined in R277-400-7 and 8, would be appropriate activities offered during the week.

R277-400-5. Plan(s) Content--Educational Services and Student Supervision and Building Access.

A. An LEA's plan shall contain measures which assure that, during an emergency, school children receive reasonably adequate educational services and supervision during school hours.

(1) Evacuation procedures shall assure reasonable care and supervision of children until responsibility has been affirmatively assumed by another responsible party.

(2) Release of a child younger than ninth grade age at other than regularly scheduled hours is prohibited unless the parent or another responsible person has been notified and has assumed responsibility for the child. An older child may be released without such notification if a school official determines that the child is reasonably responsible and notification is not practicable.

(3) LEAs shall, to the extent reasonably possible, provide educational services to school children whose regular school program has been disrupted by an extended emergency.

B. LEA plans, as determined by the LEA board, shall address access to public school buildings by specific groups: students, community members, lessees, invitees, and others.

(1) Access planning may include restricted access for some individuals.

(2) Plans shall address building access during identified time periods.

(3) Plans shall address possession and use of school keys by designated administrators and employees.

C. Resources and materials available for emergency training shall be identified in an LEA or school's plan.

R277-400-6. Emergency Preparedness Training.

A. The plan shall contain measures which assure that school children receive emergency preparedness training.

B. School children shall receive training appropriate to their ages in rescue techniques, first aid, safety measures appropriate for specific emergencies, and other emergency skills.

C. Emergency drills:

(1) During each school year, elementary schools shall conduct emergency drills at least once each month during school time.

(2) LEAs shall alternate one of the following practices or drills with required fire drills:

(a) shelter in place;

(b) earthquake; or

(c) lock down for violence;

(d) bomb threat;

(e) civil disturbance;

(f) flood;

(g) hazardous materials spill;

(h) utility failure;

(i) wind or other types of severe weather;

(j) shelter and mass care for natural and technological hazards; or

(k) an emergency drill appropriate for the particular school location.

D. Fire drills:

(1) Fire drills shall include the complete evacuation of all persons from the school building or the portion of the building used for educational purposes. An exception may be made for the staff member responsible for notifying the local fire

emergency contact and handling emergency communications.

(2) All schools shall have one fire drill in the first 10 days of the regular school year.

(3) Elementary schools (grades K-6) shall have at least one fire drill every other month throughout the school year.

(4) Secondary schools (grades 7-12) shall have at least one fire drill every two months throughout the school year.

(5) Secondary schools (grades 7-12) shall have one fire drill in the first 10 days of the calendar year.

(6) When required by the local fire chief, the local fire department shall be notified prior to each fire drill.

(7) When a fire alarm system is provided, fire drills shall be initiated by activation of the fire alarm system.

E. Schools that include both elementary and secondary grades in the school shall comply, at a minimum, with the elementary emergency drill requirements.

R277-400-7. Emergency Response Review and Coordination.

A. Each LEA shall provide an annual training for LEA and school building staff on employees' roles, responsibilities and priorities in the emergency response plan.

B. LEAs shall require schools to conduct at least one annual drill for school emergencies in addition to drills required under R277-400-6B(4) which shall be held no later than October 1 annually.

C. LEAs shall require schools to review existing security measures and procedures within their schools and make adjustments as needs demonstrate and funds are available.

D. LEAs shall develop standards and protections to the extent practicable for participants and attendees at school-related activities, with special attention to those off school property.

E. LEAs and schools shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

R277-400-8. Prevention and Intervention.

A. LEAs shall provide schools, as part of their regular curriculum, comprehensive violence prevention and intervention strategies such as resource lessons and materials on anger management, conflict resolution, and respect for diversity and other cultures.

B. As part of the violence prevention and intervention strategies, schools may provide age-appropriate instruction on firearm safety including appropriate steps to take if a student sees a firearm or facsimile in school.

C. LEAs shall also develop, to the extent resources permit, student assistance programs such as care teams, school intervention programs, and interagency case management teams.

D. In developing student assistance programs, LEAs are encouraged to coordinate with and seek support from other state agencies and the Utah State Office of Education.

R277-400-9. Cooperation With Governmental Entities.

A. As appropriate, an LEA may enter into cooperative agreements with other governmental entities to assure proper coordination and support during emergencies.

B. LEAs shall cooperate with other governmental entities, as reasonably feasible, to provide emergency relief services. The plan(s) shall contain procedures for assessing and providing school facilities, equipment, and personnel to meet public emergency needs.

C. The plan(s) developed under R277-400-5 shall delineate communication channels and lines of authority within the LEA, city, county, and state.

(1) the Board, through its superintendent, is the chief officer for emergencies involving more than one LEA, or for state or federal assistance;

(2) the local board, through its superintendent, is the chief officer for LEA emergencies;

(3) the local charter school board through its director is the chief officer for local charter school emergencies;

(4) In the event of an emergency, school personnel shall maintain control of public school students and facilities during the regular school day or until students are released to parents or legal guardians.

R277-400-10. Fiscal Accountability.

The plan(s) under R277-400-5 shall address procedures for recording LEA funds expected for emergencies, for assessing and repairing damage, and for seeking reimbursement for emergency expenditures.

KEY: emergency preparedness, disasters, safety, safety education

April 7, 2014

Notice of Continuation February 13, 2014

Art X Sec 3

53A-1-401(3)

53A-1-402(1)(b)

R277. Education, Administration.**R277-495. Required Policies for Electronic Devices in Public Schools.****R277-495-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Electronic device" means a device that is used for audio, video, or text communication or any other type of computer or computer-like instrument.
- 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. "LEA-owned electronic device" means any device that is used for audio, video, text communication or any other type of computer or computer-like instrument that is owned, provided, issued or lent by the LEA to a student or employee.
- E. "Privately-owned electronic device" means any device that is used for audio, video, text communication or any other type of computer or computer-like instrument that is not owned or issued by the LEA to a student or employee.
- F. "Public school" means all schools and public school programs, grades kindergarten through 12, that are part of the Utah Public School system, including charter schools, distance learning programs, and alternative programs.
- G. "Student," for purposes of this rule, means any individual enrolled as a student at the LEA regardless of the part-time nature of the enrollment or the age of the individual.
- H. "The Children's Internet Protection Act (CIPA)" means regulations enacted by the Federal Communications Commission (FCC) and administered by the Schools and Libraries Division of the FCC. CIPA and companion laws, the Neighborhood Children's Internet Protection Act (NCIPA) and the Protecting Children in the 21st Century Act, require recipients of federal technology funds to comply with certain Internet filtering and policy requirements.
- I. "USOE" means the Utah State Office of Education.
- J. "Utah Education Network (UEN)" is a robust network that connects most Utah LEAs, schools, and higher education institutions to quality educational resources and services consistent with Section 53B-17-102.

R277-495-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-11-901(2)(c)(i) directs the State Superintendent of Public Instruction to develop a conduct and discipline policy model for elementary and secondary public schools, and 47 CFR, Part 54, Children's Internet Protection Act, which requires schools and libraries that have computers with Internet access to certify they have Internet safety policies and technology protection measures in place in order to receive discounted internet access and services.

B. The purpose of this rule is to direct all LEAs or public schools to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices, both LEA-owned and privately-owned, while on public school premises and, for LEA-owned devices, wherever the devices are used.

R277-495-3. Local Board and Charter School Responsibilities.

A. LEAs shall require all schools under their supervision to have a policy or policies for students, employees and, where appropriate, for invitees, governing the use of electronic devices on school premises and at school sponsored activities.

B. LEAs shall review and approve policies regularly.

C. LEAs shall encourage schools to involve teachers,

parents, students, school employees and community members in developing local policies; school community councils could provide helpful information and guidance within various school communities and neighborhoods.

D. LEAs shall provide copies of their policies or clear electronic links to policies at LEA offices, in schools and on the LEA website.

E. LEAs and schools within LEAs shall work together to ensure that all policies within a school or school district are consistent and understandable for parents.

F. LEAs shall provide reasonable public notice and at least one public hearing or meeting to address a proposed or revised Internet safety policy. LEAs shall retain documentation of the policy review and adoption actions.

R277-495-4. Policy Requirements.

A. Local policies shall address the following minimum components:

- (1) definitions of devices covered by policy;
- (2) prohibitions on the use of electronic devices in ways that bully, humiliate, harass, or intimidate school-related individuals, including students, employees, and invitees, consistent with R277-609 and R277-613, or violate local, state, or federal laws; and
- (3) the prohibition of access by students, LEA employees and invitees to inappropriate matter on the Internet and World Wide Web while using LEA equipment, services or connectivity whether on school property or while using school-owned or issued devices;
- (4) the safety and security of students when using electronic mail, chat rooms, and other forms of direct electronic communications (including instant messaging);
- (5) unauthorized access, including hacking and other unlawful activities by LEA electronic device users; and
- (6) unauthorized disclosure, use and dissemination of personal student information under the Family Educational Rights and Privacy Act, 34 CFR, Part 99.

B. Additional requirements for student policies - In addition to the provisions of R277-495-4A, policies for student use of electronic devices shall include:

- (1) prohibitions against use of electronic devices during standardized assessments unless specifically allowed by statute, regulation, student IEP, or assessment directions;
- (2) provisions that inform students that there may be administrative and criminal penalties for misuse of electronic devices and that local law enforcement officers may be notified if school employees believe that a student has misused an electronic device in violation of the law;
- (3) provisions that inform students that violation of LEA acceptable use policies may result in confiscation of LEA-owned devices which may result in missed assignments, inability to participate in required assessments and possible loss of credit or academic grade consequences;
- (4) provisions that inform students that they are personally responsible for devices assigned or provided to them by the LEA, both for loss or damage of devices and use of devices consistent with LEA directives;
- (5) provisions that inform students and parents that use of electronic devices in violation of LEA or teacher instructional policies may result in the confiscation of personal devices for a designated period; and
- (6) provisions that inform students that use of privately-owned electronic devices to bully or harass other students or employees and result in disruption at school or school-sponsored activities may justify administrative penalties, including expulsion from school and notification to law enforcement.

C. Additional requirements for employee policies - In addition to the provisions of R277-495-4A, policies for

employee use of electronic devices shall include:

(1) notice that use of electronic devices to access inappropriate or pornographic images on school premises is illegal, may have both criminal and employment consequences, and where appropriate, shall be reported to law enforcement;

(2) notice that employees are responsible for LEA-issued devices at all times and misuse of devices may have employment consequences, regardless of the user; and

(3) notice that employees may use privately-owned electronic devices on school premises or at school sponsored activities when the employee has supervisory duties only as directed by the employing LEA; and

(4) required staff responsibilities in educating minors on appropriate online activities and in supervising such activities.

D. Local policies may also include the following:

(1) prohibitions or restrictions on unauthorized audio recordings, capture of images, transmissions of recordings or images, or invasions of reasonable expectations of student and employee privacy;

(2) procedures to report the misuse of electronic devices;

(3) potential disciplinary actions toward students or employees or both for violation of local policies regarding the use of electronic devices;

(4) exceptions to the policy for special circumstances, health-related reasons and emergencies, if any; and

(5) strategies for use of technology that enhance instruction.

E. An LEA shall certify annually to the USOE and as required by the FCC, that the LEA has a CIPA-compliant Internet safety policy.

R277-495-5. Board and USOE Responsibilities.

A. The Board and USOE shall provide resources, upon request, for LEAs and public schools as they develop and update electronic device policies, including sources for successful policies, assistance with reviewing draft policies and amendments, and information about bullying, harassing, and discrimination via electronic devices consistent with R277-613.

B. The Board and USOE shall develop or provide a model policy or a policy framework to assist LEAs and public schools in developing and implementing their policies.

C. The Board and USOE shall promote the use of effective strategies to enhance instruction and professional development through technology.

D. The Board and USOE shall ensure that parents and school employees are involved in the development and implementation of policies.

E. The Board and USOE shall work and cooperate with other education entities, such as the PTA, the Utah School Boards Association, the Utah Education Association, the State Charter School Board and the Utah High School Activities Association to provide consistent information to parents and community members about electronic device policies and to provide for appropriate and consistent penalties for violation of policies, including violations that take place at public school extracurricular and athletic events.

KEY: electronic devices, policy

April 7, 2014

Notice of Continuation December 16, 2013 53A-1-401(3)

53A-11-901(2)(c)(I)

Art X Sec 3

R277. Education, Administration.**R277-526. Paraeducator to Teacher Scholarship Program.****R277-526-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- C. "Paraeducator" for purposes of this rule means a school employee who:
- (1) delivers instruction under the direct supervision of a teacher; and
 - (2) works in an area where there is a shortage of qualified teachers, such as special education, Title I, English as a Second Language, reading remediation, math, or science.
- D. "Paraeducator Scholarship Selection Committee (Committee)" means the committee established by the Board to select scholarship recipients.
- E. "Scholarship" for purposes of this rule means funds provided by the Board directly to a Utah institution of higher education on behalf of the paraeducator to pay only for the actual and documented costs for tuition toward an associate's or a bachelor's degree program to become a licensed teacher.
- F. "USOE" means the Utah State Office of Education.

R277-526-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-6-802(8) which requires the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.
- B. The purpose of this rule is to distribute funds to paraeducators seeking to become licensed educators and to establish application and accountability procedures to provide funding to prospective educators directly and fairly.

R277-526-3. Scholarship Amounts and Requirements.

- A. A paraeducator stipend awarded under this rule shall be used solely and completely for expenses approved by Section 53A-6-802 and this rule annually between July 1 and the following June 30.
- B. A scholarship recipient shall remain continuously employed, consistent with the employment agreement and Section 53A-6-802(7).
- C. A scholarship recipient shall provide documentation of progress toward graduation, as requested by the employer or the Board.
- D. A scholarship recipient who does not remain employed for the duration of the scholarship period or who does not satisfactorily complete funded courses may be responsible to reimburse the Board for the amount of scholarship funding.
- E. The Committee shall determine funding for applicants from applications received from LEAs after considering the number of applications received and the amount of funding available.
- F. The Committee may develop and consider selection criteria including:
- (1) support from the recommending LEA; and
 - (2) geographical distribution of recipients.

R277-526-4. Applicant Scholarships Recipient and LEA Responsibilities.

- A. Scholarship recipients shall be employed for a minimum of 10 hours per week by a public LEA at the time of application for the Paraeducator Scholarship and during any year in which the paraeducator receives the scholarship.
- B. Scholarship applicants shall submit completed applications found on the USOE website to their employers.

C. Applicants shall provide university transcripts and information about tuition expenses only on the completed application based on the most recent information available from the Utah institution of higher education to which the applicant has either been admitted or made application.

D. LEAs shall submit all applications to the USOE on or before May 15 annually.

E. Scholarship recipients and LEAs whose employees receive funding under this program shall cooperate on any assessment required by the Board.

R277-526-5. State Board of Education Staff/Committee Responsibilities.

A. The Board shall establish a Paraeducator Scholarship Selection Committee and working procedures for the Committee consistent with 53A-6-802(4) by May 15, 2008.

- B. The Committee shall consist of:
- (1) one Board member designated by the Board;
 - (2) one representative of the Board of Regents designated by the Board of Regents;
 - (3) one representative of the largest parent/teacher association in the state;
 - (4) no more than two additional representatives of the general public designated by the Board consistent with Section 53A-6-802(4).

C. The Committee shall receive completed applications from LEAs consistent with R277-526-4.

D. The Committee shall provide names of scholarship recipients to the Board for review and comment by August 1, annually.

E. The Committee or the Board may require a summary assessment of the increased number of paraeducators who become educators and other program results from participating scholarship recipients and LEAs.

KEY: paraeducators, scholarships
April 7, 2014
Notice of Continuation August 2, 2013

Art X Sec 3
53A-1-401(3)
53A-6-802(8)

R277. Education, Administration.**R277-601. Standards for Utah School Buses and Operations.****R277-601-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Local board" means the local school board of education.

R277-601-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education in the Board, Section 53A-1-402(1)(d) which directs the Board to adopt rules for state reimbursed bus routes, bus safety and operational requirements, and other transportation needs 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 standards for state student transportation funds, school buses, and school bus drivers utilized by school districts.

R277-601-3. Standards.

A. The local board and school district personnel shall act consistent with the manual entitled STANDARDS FOR UTAH SCHOOL BUSES AND OPERATIONS, 2010, which includes information received from Utah school districts, the Utah Transportation Commission, and the Utah Department of Public Safety and is available at each department or agency.

B. STANDARDS FOR UTAH SCHOOL BUSES AND OPERATIONS, 2010, shall include:

- (1) Electronic and telecommunications devices
 - (a) A school bus operator's primary responsibility, consistent with training and policy, is the safety of passengers and the safety of the public at all times.
 - (b) A school bus operator shall not use a cell phone, wireless electronic device, or any headset, earpiece, earphones or other equipment that might distract a driver from his responsibilities, whether hand held or not, while the school bus is in motion and not appropriately parked or secured. This prohibition does not apply to the safe and appropriate use of two-way radios or to mounted, voice GPS systems. All school districts and public schools that regularly transport students shall maintain documentation of training for bus drivers and employees in the safe and appropriate use of two-way radios.
 - (c) Once the bus is stopped and safely parked, a school bus operator may use an electronic device for emergencies, to assist special needs students, for behavior management, for appropriate assistance for field/activity trips or for other business-related issues.
 - (d) A school bus operator may use an electronic device for personal use once a school bus is safely parked, appropriately secured and all passengers are safely off and at a safe distance from the bus, consistent with school district policy.
 - (e) Any violation of these provisions for emergency or compelling reasons may require documentation and will be addressed by the employing education entity.
 - (f) Violations of these provisions may result in personnel action(s) against the school bus operator consistent with school district/employer policies.
 - (g) Private contractors employed by school districts for student transportation shall also adhere strictly to these provisions in addition to the policies of the employer.
- (2) End of bus route inspection
 - (a) At the end of a student delivery, both during the day and after the final route of the day, a school bus operator shall complete the delivery, stop and park the bus, and insure that all students are off the bus.
 - (b) Where possible, this inspection shall be completed at each school site when delivering students to school.
 - (c) Following each from-school route of the day, the bus operator shall complete the same type of inspection at a safe

location a short distance from where the final student(s) left the bus. If children are found on the bus, they shall be immediately returned to their assigned bus stop location or to an alternate location, consistent with district policy, with express permission from the parents(s).

KEY: school, buses, school transportation**October 11, 2010****Notice of Continuation April 4, 2014****53A-1-402(1)(d)****53A-1-401(3)**

R277. Education, Administration.**R277-725. Electronic High School.****R277-725-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.
- C. "Home-schooled student" means a student who attends no more than two regularly scheduled classes or courses in a public school per semester as defined under Section 53A-11-102.
- D. "Open entry/open exit" means:
- (1) a method of instructional delivery that allows for flexible scheduling in response to individual student needs or requirements and demonstrated competency when knowledge and skills have been mastered; and
 - (2) students have the flexibility to begin or end study at any time, progress through course material at their own pace, and demonstrate competency when knowledge and skills have been mastered.
- E. "Unit of credit" means credit awarded for courses taken with school district/school approval and successfully completed by students. A student may also earn units of credit by demonstrating subject mastery through district/school approved methods.
- F. "USOE" means the Utah State Office of Education.

R277-725-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of the public schools in the Board, Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-131.15 which directs the Board to have a rule for distribution of funds for the electronic high school program.
- B. The purpose of this rule is to provide minimum standards, definitions, and procedures for distribution of funds and coordination of the electronic high school program.

R277-725-3. Electronic High School Funding.

- A. Funds appropriated by the Legislature for the electronic high school program shall be distributed by the Utah State Office of Education.
- B. The Utah State Office of Education may designate a fiscal agent to pay teachers' salaries, course development fees, software licensing fees, and accreditation dues.

R277-725-4. Courses and Credit.

- A. Curriculum, course offerings and course availability shall be determined by the USOE Electronic High School Principal following consultation with school district personnel and USOE specialists to determine demand and curriculum requirements.
- B. Courses shall be offered in an open-entry open-exit format.
- C. Courses shall be designed to be competency-based, with no specific student seat time requirement. (Historically, the average course takes the average student 175 to 200 hours to successfully complete a one-credit course).
- D. Credits that students earn through the electronic high school shall be accepted by schools or school districts consistent with this rule.

R277-725-5. Student Eligibility for Enrollment.

- A. There are no age or grade restrictions for Utah students to enroll in electronic high school courses.
- B. Students are accepted into electronic high school courses on a first-come first-served basis.
- C. A student may register for electronic high school

course(s) following approval from the student's residence area secondary school counselor, consistent with the student's SEP/SEOP.

- D. The school counselor shall assist students in evaluating courses required for and offered through the electronic high school.

R277-725-6. Electronic High School Services to Students with Disabilities.

Students with disabilities who may need additional services or resources and who seek to enroll in electronic high school classes may request appropriate accommodations through the students' assigned schools or school districts.

R277-725-7. Student Fees or Tuition.

- A. Electronic high school courses are provided to students who are Utah residents, as defined under Section 53A-2-201(1), free of charge.
- B. Non-resident students may enroll in electronic high school courses for a fee of \$100 per course per semester provided that the course can accommodate additional students.

R277-725-8. Teacher Requirements and Payments.

- A. All electronic high school teachers are licensed Utah educators consistent with Section 53A-6.
- B. Electronic high school teachers are paid a salary determined by the electronic high school salary schedule and negotiated to the extent necessary with the USOE Electronic High School Principal.
- C. All electronic high school teachers shall be subject to laws and administrative rules for Utah educators, including the state and federal Family Educational Rights and Privacy Act, Sections 53A-13-301 and 302, and 20 U.S.C. Section 1232g and 34 C.F.R. Part 99; child abuse reporting requirements; and Professional Standards for Utah Educators, R686-103.

R277-725-9. Electronic High School Diploma.

- A. Three types of Utah students may be eligible for an electronic high school diploma:
- (1) a home-schooled student;
 - (2) a student who has dropped out of school as defined under R277-419 and whose original high school class has graduated; and
 - (3) a student who is identified by his resident school district as ineligible for graduation from a traditional high school program for specific reasons.
- B. Graduation criteria
- (1) Students shall satisfy all requirements established by R277-700 for a high school diploma.
 - (2) Students who seek an electronic high school diploma shall be required to satisfy the requirements of the Participation Skills and Techniques and Individualized Lifetime Activity courses which are Core classes required for high school graduation. Students may satisfy course requirements through district-approved activities outside of the Electronic High School program.
- C. Awarding of diplomas
- (1) Diplomas shall be awarded to electronic high school graduates at least annually.
 - (2) An annual commencement program may be offered by the USOE. Electronic high school graduates may voluntarily participate.
- D. Additional provisions
- (1) The USOE shall provide graduation information upon request to interested prospective graduates.
 - (2) The USOE and resident school district personnel shall assist prospective graduates, to the extent of resources available, with transcript evaluation and suggestions for completing graduation requirements required beyond the electronic high

school curriculum.

KEY: electronic high school
September 2, 2004
Notice of Continuation April 4, 2014

Art X Sec 3
53A-1-401(3)
53A-17a-131.15

R277. Education, Administration.**R277-916. Career and Technical Education Introduction and Work-Based Learning Programs.****R277-916-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "CTE Intro" means Career and Technical Education Introduction which is a 7th grade core curriculum course comprised of activities encouraging students to explore college and career opportunities in Agriculture, Business, Family and Consumer Sciences, Health Science, Information Technology, Marketing, Economics, and Technology and Engineering Education. Career development activities are integrated throughout the curriculum. The CTE Intro course is coordinated with the Comprehensive Counseling and Guidance program.
- C. "Cone" means a group of schools whose students feed a high school and schools and agencies which interact with the high school.
- D. "Geographical Region" means one of the eight Career and Technical Education planning units: Bear River, Wasatch Front North, Wasatch Front South, Mountainland, Uintah Basin, Central, Southeast, and Southwest.
- E. "LEA" means a local education agency which includes school boards/public school districts, and charter schools.
- F. "USOE" means the Utah State Office of Education.
- G. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each LEA.
- H. "Work-Based Learning" (WBL) means activities that involve teaching students a variety of skills used in business and industry through experiential career development experiences.

R277-916-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-15-202 which allows the Board to establish minimum standards for career and technical education programs in the public education system, and Section 53A-17a-113 which directs the Board to distribute specific amounts of funds to LEAs.
- B. This rule establishes standards and procedures for LEAs seeking to qualify for Career and Technical Education Introduction and WBL Programs funds administered by the Board.

R277-916-3. Disbursement of Funds -- Career and Technical Introduction.

- A. CTE Intro funds shall be utilized to update the CTE Intro curriculum, purchase and maintain needed equipment and supplies, field test new CTE Intro program modifications, and provide ongoing professional development for teachers, counselors, and administrators.
- B. LEAs shall meet all CTE Intro requirements in order to receive funding.
- C. CTE Intro funds shall be allocated to LEAs for approved schools using a base amount per school.
- D. Funds remaining after funds are distributed under Section R277-916-3C, above, shall be distributed based on enrollment in grade 7 to approved schools based on the October 1 enrollment report for the previous year.
- E. LEAs shall annually complete a funding application with assurances of each school meeting CTE Intro standards.
- F. Personnel from each selected school shall participate in USOE training.
- G. LEAs shall receive continued USOE support and funding based on meeting established standards.
- H. LEAs shall apply for funding annually.

R277-916-4. Career and Technical Education Introduction -**Standards.**

- A. The Career and Technical Education Introduction funds may be used to:
- (1) update the CTE Intro curriculum;
 - (2) update and maintain equipment and supplies, including consumables for the CTE Intro course;
 - (3) implement new CTE Intro program modifications; and
 - (4) provide support for USOE sponsored professional development activities for teachers, counselors, and administrators.
- B. LEAs may qualify for Career and Technical Education Introduction funds consistent with the following:
- (1) CTE Intro program funds shall not be used for personnel costs;
 - (2) Schools shall teach 180 days of CTE Intro core curriculum as a stand alone course with distinct credit which includes the components and objectives of Agriculture, Business, Family and Consumer Sciences, Information Technology, Health Science, Marketing, Economics, Technology and Engineering Education, and Career Guidance and Development;
 - (3) All CTE Intro teachers and counselors at the schools shall have appropriate licenses and endorsements;
 - (4) All CTE Intro team members shall agree to assist in the development and implementation of new CTE Intro activities and materials;
 - (5) Schools shall utilize the services of the WBL coordinator, where available, to integrate grade level appropriate work-based learning activities into CTE Intro. Where WBL Coordinators are not available, the CTE Intro team shall plan and provide the WBL activities;
 - (6) Schools shall integrate grade level appropriate career development content into the CTE Intro activities and use the services of the counselor in the program;
 - (7) The LEA shall utilize the full allocation of funds as provided under R277-916-4. The LEA shall support staff development activities necessary to the Core CTE Intro content as adopted by the Board; and
 - (8) All CTE Intro related personnel in the school shall participate fully in evaluating the current program, recommending changes or modifications, pilot testing and implementing new activities, materials, and resources.
 - (9) All CTE Intro related personnel in the school shall participate in annual planning and accountability for these funds.
 - (10) All CTE Intro related personnel shall be part of the CTE Program Approval evaluation every six years.

R277-916-5. Work-Based Learning - Disbursement of Funds.

- A. All public elementary, secondary, and postsecondary/adult schools shall be aligned by cone and grouped within the LEA.
- B. The proportion of total WBL funding allocated for each participating LEA shall remain the same as the previous year unless the LEA discontinues the program or LEA proportions are adjusted by the Board.
- C. State appropriated WBL funds require an equal match of funds provided by participating LEAs.

R277-916-6. Work-Based Learning - Standards.

- A. WBL shall be integrated into all levels of the educational delivery system and shall be coordinated within the cones of the LEA and among regions.
- B. To be eligible for WBL funds, LEAs shall:
- (1) have the program approved by the local board.
 - (2) employ licensed WBL coordination personnel with salaries/benefits matched by the local recipient of funds.
 - (3) document that a WBL committee representing all

schools within the cone has been created, is functioning effectively and regularly addresses WBL issues.

(4) conduct WBL activities utilizing information from business and industry, administrators, teachers, counselors, parents and students.

(5) develop work-based preparation, participation, and evaluation activities for students and teachers involved in all WBL cone activities.

(6) maintain evidence that WBL components have been integrated and coordinated with elementary career awareness, secondary career exploration, integrated core curriculum activities, CTE Intro and comprehensive guidance and counseling.

(7) maintain evidence of WBL activities developed in coordination with IEP/SEP/SEOP/504 requirements in each cone and all WBL assurances.

(8) require the inclusion of all student groups within the cone in career development and preparation.

(9) demonstrate WBL coordination with employers and with other school/community development activities.

(10) verify sufficient budget for a WBL coordinator, facilities, materials, equipment, and support staff is available.

(11) participate in initial state-sponsored WBL coordination professional development and in periodic ongoing coordination and professional development activities.

(12) require that the WBL team utilize a database system developed by the LEA for the LEA's specific needs.

(13) participate in the CTE Program Approval evaluation every six years.

KEY: public schools, work-based learning programs*

May 8, 2012

Notice of Continuation April 4, 2014

Art X Sec 3

53A-15-202

53A-17a-113

R313. Environmental Quality, Radiation Control.**R313-14. Violations and Escalated Enforcement.****R313-14-1. Introduction, Purpose, and Authority.**

(1) The purpose of the radiation control inspection and compliance program is to assure the radiological safety of the public, radiation workers, and the environment by:

- (a) ensuring compliance with Utah Radiation Control rules or license conditions;
- (b) obtaining prompt correction of violations;
- (c) deterring future violations; and
- (d) encouraging improvement of licensee, permittee, or registrant performance, including the prompt identification, reporting, and correction of potential safety problems.

(2) Consistent with the purpose of the radiation control inspection and compliance program, prompt and vigorous enforcement action shall be taken when dealing with licensees, permittees, or registrants who fail to demonstrate adherence to these rules. Enforcement action is dependent on the circumstances of the case and may require that discretion be exercised after consideration of these standards. Sanctions have been designed to ensure that a licensee, permittee, or registrant does not deliberately profit from violations of the Utah Radiation Control rules.

(3) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-103.5(1)(d), 19-3-104(4) and 19-3-104(8), 19-3-108, 19-3-109, and 19-3-111.

R313-14-3. Definitions.

As used in Rule R313-14, the following definitions apply:

(1) "Material False Statement" means a statement that is false by omission or commission and is relevant to the regulatory process.

(2) "Requirement" means a legally binding mandate such as a statute, rule, license condition, permit, registration, technical specification, or order.

(3) "Similar" means those violations which could have been reasonably expected to have been prevented by the licensee's, permittee's, or registrant's corrective action for a previous violation.

(4) "Willfulness" means the deliberate intent to violate or falsify, and includes careless disregard for requirements. Acts which do not rise to the level of careless disregard are not included in this definition.

R313-14-10. Severity of Violations.

(1) Violations are placed in one of two major categories. These categories are:

- (a) electronically produced radiation operations; or
- (b) radioactive materials operations.

(2) Regulatory requirements vary in public health and environmental safety significance. Therefore, it is essential that the relative importance of violations be identified as the first step in the enforcement process. Based upon their relative hazard, violations are assigned to one of five levels of severity.

(3) Severity Level I is assigned to violations that are the most significant and Severity Level V violations are the least significant. In general, violations that are included in Severity Levels I and II involve actual or high potential impact on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of more than minor concern, however, if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

(4) The severity of a violation shall be characterized at the level best suited to the significance of the particular violation. A severity level may be increased if circumstances surrounding the violation involve careless disregard of requirements, deception, or other indications of willfulness. In determining the specific severity level of a violation involving willfulness,

relevant factors will be considered, including the position of the person involved in the violation, the significance of an underlying violation, the intent of the violator, and the economic advantage gained by the violation. The relative weight given to these factors in arriving at the appropriate severity level is dependent on the circumstances of the violation.

(5) The severity level assigned to material false statements may be Severity Level I, II, or III, depending on the circumstances surrounding the statement. In determining the specific severity level of a violation involving material false statements or falsification of records, consideration is given to factors like the position of the person involved in the violation, for example, a first line supervisor as opposed to a senior manager, the significance of the information involved, and the intent of the violator. Negligence not amounting to careless disregard would be weighted differently than careless disregard or deliberateness. The relative weight given to these factors in arriving at the appropriate severity level is dependent on the circumstances of the violation.

R313-14-15. Enforcement Actions.

This Section describes the enforcement sanctions available to the Director and specifies the conditions under which they are to be used.

(1) Notice of Violation

(a) A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The licensee, permittee, or registrant may be required to provide a written statement describing:

(i) corrective steps which have been taken by the licensee, permittee, or registrant and the results achieved;

(ii) corrective steps which shall be taken to prevent recurrence; and

(iii) the date when full compliance will be achieved.

(b) The Director may require responses to Notices of Violation to be under oath.

(c) A Notice of Violation is used by the Director as a method for formalizing the existence of a violation. The Notice may be the only enforcement action taken or it may be used as a basis for other enforcement actions. Licensee, permittee, or registrant initiative for self-identification and correction of problems is encouraged. The Director shall not generally issue Notices of Violation for a violation that meets the five following tests:

(i) it was identified by the licensee, permittee, or registrant;

(ii) it fits in Severity Level IV or V;

(iii) it was reported, in writing, to the Director;

(iv) it was or will be corrected, including measures to prevent recurrence, within 90 days or other period approved by the Director; and

(v) it was not a violation that could reasonably be expected to have been prevented by the licensee's, permittee's, or registrant's corrective action for a previous violation.

(d) Licensees, permittees, or registrants are not ordinarily cited for violations resulting from matters outside of their control, like equipment failures that were not avoidable by reasonable quality assurance measures or management controls. However, licensees, permittees, and registrants are held responsible for acts of their employees. Accordingly, the rules should not be construed to excuse personal errors.

(2) Civil Penalty.

(a) A civil penalty is a monetary penalty that may be imposed for violation of Utah Radiation Control Rules or lawful orders issued by the Director. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations. Generally, civil penalties are imposed for Severity Level I and Severity Level II violations. In the absence of mitigating circumstances, civil penalties are considered for

Severity Level III violations. Penalties are not ordinarily imposed for Severity Level IV and V violations unless those violations are similar to previous violations for which the licensee, permittee, or registrant failed to take effective corrective action.

(b) The level of a civil penalty may not exceed \$10,000 per violation. Except as modified by provision of the next paragraphs, the base civil penalties are as follows:

TABLE

Severity Level I Violations	\$10,000
Severity Level II Violations	\$ 8,000
Severity Level III Violations	\$ 5,000
Severity Level IV Violations	\$ 1,500
Severity Level V Violations	\$ 500

(i) Comprehensive licensee, permittee, or registrant programs for detection, correction and reporting of problems that may constitute, or lead to, violation of regulatory requirements are important and consideration may be given for effective internal audit programs. When licensees, permittees, or registrants find, report, and correct a violation expeditiously and effectively, the Director may apply adjustment factors to reduce or eliminate a civil penalty.

(ii) Ineffective licensee, permittee, or registrant programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant violations, repeated poor performance in an area of concern, or serious breakdown in management controls, the Director may apply the full enforcement authority.

(iii) The Director may review the proposed civil penalty case on its own merits and adjust the civil penalty upward or downward appropriately. After considering the relevant circumstances, adjustments to these values may be made for the factors identified below:

(A) Reduction of the civil penalty may be given when a licensee, permittee, or registrant identifies the violation and promptly reports, in writing, the violation to the Director. No consideration will be given to this factor if the licensee, permittee, or registrant does not take immediate action to correct the problem upon discovery.

(B) Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee, permittee, or registrant takes corrective action, including actions to prevent recurrence, may be considered in modifying the civil penalty to be assessed.

(C) Reduction of the civil penalty may be given for prior good performance in the general area of concern.

(D) The civil penalty may be increased as much as 50%, up to the \$10,000 maximum, for cases where the licensee, permittee, or registrant had prior knowledge of a problem as a result of an internal audit, or specific Director or industry notification, and had failed to take effective preventive steps.

(E) The civil penalty may be increased as much as 50%, up to the \$10,000 maximum, where multiple examples of a particular violation are identified during the inspection period.

(c) A violation of a continuing nature shall, for the purposes of calculating the proposed civil penalty, be considered a separate violation for each day of its continuance. A continuing violation is not considered a repeat violation. In the event a violation is repeated within five years, the scheduled amount of the civil penalty may be increased 50%, up to the \$10,000 maximum; and for repeat violations of Severity Levels II and III, the penalty will not be avoided by compliance. Other rights and procedures are not affected by the repeat violation.

(d) Payment of civil penalties shall be made within 30 working days of receipt of a Notice of Violation and Notice of Proposed Imposition of a Civil Penalty. An extension may be given when extenuating circumstances are shown to exist. Payment shall be made by check, payable to the Division of

Radiation Control and mailed to the Division at the address shown with the Notice of Violation.

(3) Orders.

(a) An Order is a written directive to modify, suspend, or revoke a license, permit, or registration; to cease and desist from a given practice or activity; to issue a civil penalty; or to take other action that may be necessary.

(b) Modification Orders are issued when some change in licensee, permittee, or registrant equipment, procedures, or management control is necessary.

(c) Suspension Orders may be used:

(i) to remove a threat to the public health and safety or the environment;

(ii) when the licensee, permittee, or registrant has not responded adequately to other enforcement action;

(iii) when the licensee, permittee, or registrant interferes with the conduct of an inspection; or

(iv) for a reason not mentioned above for which license, permit, or registration revocation is authorized.

(v) Suspensions may apply to all or part of the regulated activity. Ordinarily, an activity is not suspended, nor is a suspension prolonged for failure to comply with requirements when the failure is not willful or when adequate corrective actions have been taken.

(d) Revocation Orders may be used:

(i) when a licensee, permittee, or registrant is unable or unwilling to comply with these rules;

(ii) when a licensee, permittee, or registrant refuses to correct a violation;

(iii) when a licensee, permittee, or registrant does not respond to a Notice of Violation;

(iv) when a licensee, permittee, or registrant does not pay a fee required by the Department; or

(v) for any other reason for which revocation is authorized.

(e) Cease and Desist Orders are used to stop unauthorized activity that has continued despite notification by the Director that the activity is unauthorized.

(f) Orders may be made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the Order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing is afforded. For cases in which a basis could reasonably exist for not taking the action as proposed, the licensee, permittee, or registrant shall be afforded an opportunity to show cause why the Order should not be issued in the proposed manner.

(4) Escalation of Enforcement Sanctions.

(a) In accordance with the provisions of Section 19-3-111 the radioactive material of a person may be impounded. Administrative procedures will be conducted as provided by Section R313-14-20, prior to disposal of impounded radioactive materials.

(b) Violations of Severity Levels I, II, or III are considered to be very serious. If repetitive very serious violations occur, the Director may issue Orders in conjunction with other enforcement actions to achieve immediate corrective actions and to deter their recurrence. In accordance with the criteria contained in this section, the Director shall carefully consider the circumstances of cases when selecting and applying the appropriate sanctions.

(c) The progression of enforcement actions for repetitive violations may be based on violations under a single license, permit, or registration. The actual progression to be used in a particular case may depend on the circumstances. When more than one facility is covered by a single license, permit, or registration, the normal progression may be based on repetitive violations under the same license, permit, or registration. It should be noted that under some circumstances, for example,

where there is common control over some facet of facility operations, repetitive violations may be charged even though the second violation occurred at a different facility or under a different license, permit, or registration.

(5) Related Administrative Actions.

(a) In addition to the formal enforcement mechanisms of Notices of Violation and Orders, the Director may use administrative mechanisms, like enforcement conferences, bulletins, circulars, information notices, generic letters, and confirmatory action letters as part of the enforcement and regulatory program. Licensees, permittees, and registrants are expected to adhere to obligations and commitments resulting from these processes and the Director shall, if necessary, issue appropriate orders to make sure that expectation is realized.

(b) Enforcement Conferences are meetings held by the Director with licensee, permittee, or registrant management to discuss safety, public health, or environmental problems, compliance with regulatory requirements, proposed corrective measures, including schedules for implementation, and enforcement options available to the Director.

(c) Bulletins, Circulars, Information Notices, and Generic Letters are written notifications to groups of licensees, permittees, or registrants identifying specific problems and calling for or recommending specific actions on their part. Responses to these notifications may be required.

(d) Confirmatory Action Letters are letters confirming a licensee's, permittee's, or registrant's agreement to take certain actions to remove significant concerns about health and safety, or the environment.

R313-14-25. Public Disclosure of Enforcement Actions.

Enforcement actions and responses are publicly available for inspection. In addition, press releases are generally issued for Notices of Proposed Imposition of a Civil Penalty and Orders. In the case of orders and civil penalties related to violations at Severity Level I, II, or III, press releases may be issued at the time of the Order or the Notice of Proposed Imposition of the Civil Penalty. Press releases are not normally issued for Notices of Violation.

KEY: violations, penalties, enforcement

April 3, 2014

Notice of Continuation July 7, 2011

19-3-109

19-3-111

R313. Environmental Quality, Radiation Control.**R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.****R313-25-1. Purpose and Authority.**

(1) The purpose of this rule is to prescribe the requirements for the issuance of licenses for the land disposal of wastes received from other persons.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4), 19-3-104(8), 19-3-104(11), and 19-3-104(12).

(3) The requirements of Rule R313-25 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-25-2. Definitions.

As used in Rule R313-25, the following definitions apply:

"Active maintenance" means significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Sections R313-25-20 and R313-25-21 are met. Active maintenance may include the pumping and treatment of water from a disposal unit, the replacement of a disposal unit cover, or other episodic or continuous measures. Active maintenance does not include custodial activities like repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep.

"Approval application" means an application by a radioactive waste facility regulated under Title 19, Chapter 3 or Title 19, Chapter 5, for a permit, permit modification, license, license amendment, or other authorization.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

"Commencement of construction" means clearing of land, excavation, or other substantial action that could adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Day" for purposes of this Rule means calendar days.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit may be a trench.

"Engineered barrier" means a man-made structure or device intended to improve the land disposal facility's performance under Rule R313-25.

"Groundwater permit" means a groundwater quality discharge permit issued under the authority of Title 19, Chapter 5 and Rule R317-6.

"Hydrogeologic unit" means a soil or rock unit or zone that has a distinct influence on the storage or movement of ground water.

"Inadvertent intruder" means a person who may enter the disposal site after closure and engage in activities unrelated to post closure management, such as agriculture, dwelling construction, or other pursuits which could, by disturbing the site, expose individuals to radiation.

"Intruder barrier" means a sufficient depth of cover over the

waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in Rule R313-25, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive waste.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care, and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Stability" means structural stability.

"Surveillance" means monitoring and observation of the disposal site to detect needs for maintenance or custodial care, to observe evidence of intrusion, and to ascertain compliance with other license and regulatory requirements.

"Tolling period," for purposes of this Rule, means a period during which days are not counted toward the deadlines specified in Subsections R313-25-6(3)(c), (4)(c)(i), (5)(b)(i), and (6)(b)(i).

"Treatment" means the stabilization or the reduction in volume of waste by a chemical or a physical process.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in (b), (c), and (d) of the definition for byproduct material found in Section R313-12-3.

R313-25-3. Pre-licensing Plan Approval Criteria for Siting of Commercial Radioactive Waste Disposal Facilities.

(1) Persons proposing to construct or operate commercial radioactive waste disposal facilities, including waste incinerators, shall obtain a plan approval from the Director before applying for a license. Plans shall meet the siting criteria and plan approval requirements of Section R313-25-3.

(2) The siting criteria and plan approval requirements in Section R313-25-3 apply to prelicensing plan approval applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, shall not be located:

(a) within or underlain by:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100 year floodplains;

(iv) areas 200 feet distant from Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas five miles distant from existing permanent dwellings, residential areas, and other habitable structures,

including schools, churches, and historic structures;

(x) areas five miles distant from surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas 1000 feet distant from archeological sites to which adverse impacts cannot reasonably be mitigated;

(xii) recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l; or

(xiii) drinking water source protection areas designated by the Utah Drinking Water Board;

(b) in areas:

(i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which aquifers do not exceed state ground water standards for pollutants;

(ii) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000 mg/l when the distance from the surface to the ground water is less than 100 ft.;

(iii) areas of extensive withdrawal of water, mineral or energy resources.

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains.

(4) Commercial radioactive waste disposal facilities may not be located within a distance to existing drinking water wells and watersheds for public water supplies of five years ground water travel time plus 1000 feet.

(5) The plan approval siting application shall include hydraulic conductivity and other information necessary to estimate adequately the ground water travel distance.

(6) The plan approval siting application shall include the results of studies adequate to identify the presence of ground water aquifers in the area of the proposed site and to assess the quality of the ground water of all aquifers identified in the area of the proposed site.

(7) Emergency response and safety.

(a) The plan approval siting application shall demonstrate the availability and adequacy of services for on-site emergencies, including medical and fire response. The application shall provide written evidence that the applicant has coordinated on-site emergency response plans with the local emergency planning committee (LEPC).

(b) The plan approval siting application shall include a comprehensive plan for responding to emergencies at the site.

(c) The plan approval siting application shall show proposed routes for transportation of radioactive wastes within the state. The plan approval siting application shall address the transportation means and routes available to evacuate the population at risk in the event of on-site accidents, including spills and fires.

(8) The plan approval siting application shall provide evidence that if the proposed disposal site is on land not owned by state or federal government, that arrangements have been made for assumption of ownership in fee by a state or federal agency.

(9) Siting Authority. The Director recognizes that Titles 10 and 17 of the Utah Code give cities and counties authority for local use planning and zoning. Nothing in Section R313-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R313-25-4. License Required.

(1) Persons shall not receive, possess, or dispose of waste at a land disposal facility unless authorized by a license issued by the Director pursuant to Rules R313-25 and R313-22.

(2) Persons shall file an application with the Director

pursuant to Section R313-22-32 and obtain a license as provided in Rule R313-25 before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license and other penalties established by law and rules.

R313-25-5. Content of Application.

In addition to the requirements set forth in Section R313-22-33, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in Sections R313-25-7 through R313-25-11.

R313-25-6. Director Review of Application.

(1) The Director shall review each approval application to determine whether it complies with applicable statutory and regulatory requirements. Approval applications will be categorized as Category 1, 2, 3 and 4 applications, as provided in Subsections R313-25-6(2) through (5).

(2) Category 1 applications.

(a) A Category 1 application is an application that:

(i) is administrative in nature;

(ii) requires limited scrutiny by the Director; and

(iii) does not require public comment.

(b) Examples of a Category 1 application include an application to:

(i) correct typographical errors;

(ii) Change the name, address, or phone number of persons or agencies identified in the license or permit;

(iii) change the procedures or location for maintaining records; or

(iv) extend the date for compliance with a permit or license requirement by no more than 120 days.

(c) The Director shall review and approve or deny a Category 1 application within 30 days after the day on which the Director Receives the application.

(3) Category 2 applications:

(a) A Category 2 application is one that is not a Category 1, 3 or 4 application.

(b) Examples of a Category 2 application include:

(i) Increase in process, storage, or disposal capacity

(ii) Change engineering design, construction, or process controls;

(iii) Approve a proposed corrective action plan; or

(iv) Transfer direct control of a license or groundwater permit.

(c)(i) The Director shall review and approve or deny a Category 2 application within 180 days after the day on which the Director receives the application.

(ii) The period described in Subsection R313-25-6(3)(c)(i) shall be tolled as provided in Subsection R313-25-6(7).

(4) Category 3 applications.

(a) Category 3 application is an application for:

(i) a radioactive waste license renewal;

(ii) a groundwater permit renewal;

(iii) an amendment to an existing radioactive waste license or groundwater permit to allow a new disposal cell;

(iv) an amendment to an existing radioactive waste license or groundwater permit that would allow the facility to eliminate groundwater monitoring; or

(v) approval of a radioactive waste disposal facility closure plan.

(b)(i) The Director shall review and approve or deny a Category 3 application within 365 days after the day on which the Director receives the application.

(ii) The period described in Subsection R313-25-6(4)(b)(i) shall be tolled as provided in Subsection R313-25-6(7).

(5) Category 4 applications.

- (a) A Category 4 application is an application for:
 - (i) a new radioactive waste license; or
 - (ii) a new groundwater permit.
- (b)(i) The Director shall review and approve or deny a Category 4 application within 540 days after the day on which the Director receives the application.
 - (ii) The period described in Subsection R313-25-6(5)(b)(i) shall be tolled as provided in Subsection R313-25-6(7).
- (6)(a) Within 60 days after the day on which the Director receives a Category 2, 3 or 4 approval application, the Director shall determine whether the application is complete and contains all the information necessary to process it for approval and make a finding by issuance of a written:
 - (i) notice of completeness to the applicant; or
 - (ii) notice of deficiency to the applicant, including a list of the additional information necessary to complete the application.
- (b) The Director shall review written information submitted in response to a notice of deficiency within 30 days after the day on which the Director receives the supplemental information and shall again follow the procedures specified in Subsection R313-25-6(1)(a).
- (c) If a document that is submitted as an application is substantially deficient, the Director may determine that it does not qualify as an application. Any such determination shall be made within 45 days of the document's submission and will include the Director's written findings.
- (7) Tolling Periods. The periods specified for the Director's review and approval or denial under Subsections R313-25-6(3)(c)(i), (4)(b)(i), and (5)(b)(i) shall be tolled:
 - (a) while an owner or operator of a facility responds to the Director's request for information;
 - (b) during a public comment period; and
 - (c) while the federal government reviews the application.
- (8) The Director shall prepare a detailed written explanation of the technical and regulatory basis for the Director's approval or denial of an approval application.

R313-25-7. General Information.

The general information shall include the following:

- (1) identity of the applicant including:
 - (a) the full name, address, telephone number, and description of the business or occupation of the applicant;
 - (b) if the applicant is a partnership, the names and addresses of the partners and the principal location where the partnership does business;
 - (c) if the applicant is a corporation or an unincorporated association;
 - (i) the state where it is incorporated or organized and the principal location where it does business; and
 - (ii) the names and addresses of its directors and principal officers; and
 - (d) if the applicant is acting as an agent or representative of another person in filing the application, the applicant shall provide, with respect to the other person, information required under Subsection R313-25-7(1).
- (2) Qualifications of the applicant shall include the following:
 - (a) the organizational structure of the applicant, both offsite and onsite, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;
 - (b) the technical qualifications, including training and experience of the applicant and members of the applicant's staff, to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in Subsection R313-25-7(2)(a) shall be provided;
 - (c) a description of the applicant's personnel training program; and
 - (d) the plan to maintain an adequate complement of trained

personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

- (3) A description of:
 - (a) the location of the proposed disposal site;
 - (b) the general character of the proposed activities;
 - (c) the types and quantities of waste to be received, possessed, and disposed of;
 - (d) plans for use of the land disposal facility for purposes other than disposal of wastes; and
 - (e) the proposed facilities and equipment; and
- (4) proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

R313-25-8. Specific Technical Information.

The application shall include certain technical information. The following information is needed to determine whether or not the applicant can meet the performance objectives and the applicable technical requirements of Rule R313-25:

- (1) A description of the natural and demographic disposal site characteristics shall be based on and determined by disposal site selection and characterization activities. The description shall include geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.
- (2) Descriptions of the design features of the land disposal facility and of the disposal units for near-surface disposal shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures.
- (3) Descriptions of the principal design criteria and their relationship to the performance objectives.
- (4) Descriptions of the natural events or phenomena on which the design is based and their relationship to the principal design criteria.
- (5) Descriptions of codes and standards which the applicant has applied to the design, and will apply to construction of the land disposal facilities.
- (6) Descriptions of the construction and operation of the land disposal facility. The description shall include as a minimum the methods of construction of disposal units; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; onsite traffic and drainage systems; survey control program; methods and areas of waste storage; and methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other non-radiological substances which might affect meeting the performance objectives of Rule R313-25.
- (7) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closures and to eliminate the need for active maintenance after closure.
- (8) Identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control.
- (9) Descriptions of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility.
- (10) Descriptions of quality assurance programs, tailored to low-level waste disposal, including audit and managerial

controls, for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in Section R313-25-20 and monitoring of occupational radiation exposure to ensure compliance with the requirements of Rule R313-15 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. The applicant shall describe procedures, instrumentation, facilities, and equipment appropriate to both routine and emergency operations.

(12) A description of the environmental monitoring program to provide data and to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration is indicated.

(13) Descriptions of the administrative procedures that the applicant will apply to control activities at the land disposal facility.

(14) A description of the facility electronic recordkeeping system as required in Section R313-25-33.

R313-25-9. Technical Analyses.

(1) The licensee or applicant shall conduct a site-specific performance assessment and receive Director approval prior to accepting any radioactive waste if:

(a) the waste was not considered in the development of the limits on Class A waste and not included in the analyses of the Draft Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," NUREG-0782. U.S. Nuclear Regulatory Commission. September 1981, or

(b) the waste is likely to result in greater than 10 percent of the dose limits in Section R313-25-19 during the time period at which peak dose would occur, or

(c) the waste will result in greater than 10 percent of the total site source term over the operational life of the facility, or

(d) the disposal of the waste would result in an unanalyzed condition not considered in Rule R313-25.

(2) A licensee that has a previously-approved site-specific performance assessment that addressed a radioactive waste for which a site-specific performance assessment would otherwise be required under Subsection R313-25-9(1) shall notify the Director of the applicability of the previously-approved site-specific performance assessment at least 60 days prior to the anticipated acceptance of the radioactive waste.

(3) The licensee shall not accept radioactive waste until the Director has approved the information submitted pursuant to Subsections R313-25-9(1) or (2).

(4) The licensee or applicant shall also include in the specific technical information the following analyses needed to demonstrate that the performance objectives of Rule R313-25 will be met:

(a) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in Section R313-25-20.

(b) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(c) Analysis of the protection of individuals during

operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of Rule R313-15.

(d) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, surface drainage of the disposal site, and the effects of changing lake levels. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

(5)(a) Notwithstanding Subsection R313-25-9(1), any facility that proposes to land dispose of significant quantities of concentrated depleted uranium (more than one metric ton in total accumulation) after June 1, 2010, shall submit for the Director's review and approval a performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions of Utah rules will be met for the total quantities of concentrated depleted uranium and other wastes, including wastes already disposed of and the quantities of concentrated depleted uranium the facility now proposes to dispose. Any such performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period shall be a minimum of 10,000 years. Additional simulations shall be performed for the period where peak dose occurs and the results shall be analyzed qualitatively.

(b) No facility may dispose of significant quantities of concentrated depleted uranium prior to the approval by the Director of the performance assessment required in Subsection R313-25-9(5)(a).

(c) For purposes of this Subsection R313-25-9(5) only, "concentrated depleted uranium" means waste with depleted uranium concentrations greater than 5 percent by weight.

R313-25-10. Institutional Information.

The institutional information submitted by the applicant shall include:

(1) A certification by the federal or state agency which owns the disposal site that the agency is prepared to accept transfer of the license when the provisions of Section R313-25-17 are met and will assume responsibility for institutional control after site closure and for post-closure observation and maintenance.

(2) Evidence, if the proposed disposal site is on land not owned by the federal or a state government, that arrangements have been made for assumption of ownership in fee by the federal or a state agency.

R313-25-11. Financial Information.

This information shall demonstrate that the applicant is financially qualified to carry out the activities for which the license is sought. The information shall meet other financial assurance requirements of Rule R313-25.

R313-25-12. Requirements for Issuance of a License.

A license for the receipt, possession, and disposal of waste containing radioactive material will be issued by the Director upon finding that:

(1) the issuance of the license will not constitute an unreasonable risk to the health and safety of the public;

(2) the applicant is qualified by reason of training and experience to carry out the described disposal operations in a manner that protects health and minimizes danger to life or property;

(3) the applicant's proposed disposal site, disposal design,

land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control, are adequate to protect the public health and safety as specified in the performance objectives of Section R313-25-20;

(4) the applicant's proposed disposal site, disposal site design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control are adequate to protect the public health and safety in accordance with the performance objectives of Section R313-25-21;

(5) the applicant's proposed land disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in accordance with Rule R313-15;

(6) the applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and post-closure institutional control plans are adequate to protect the public health and safety in that they will provide reasonable assurance of the long-term stability of the disposed waste and the disposal site and will eliminate to the extent practicable the need for continued maintenance of the disposal site following closure;

(7) the applicant's demonstration provides reasonable assurance that the requirements of Rule R313-25 will be met;

(8) the applicant's proposal for institutional control provides reasonable assurance that control will be provided for the length of time found necessary to ensure the findings in Subsections R313-25-12(3) through (6) and that the institutional control meets the requirements of Section R313-25-29.

(9) the financial or surety arrangements meet the requirements of Rule R313-25.

R313-25-13. Conditions of Licenses.

(1) A license issued under Rule R313-25, or a right thereunder, may not be transferred, assigned, or disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to a person, unless the Director finds, after securing full information, that the transfer is in accordance with the provisions of the Radiation Control Act and Rules and gives his consent in writing in the form of a license amendment.

(2) The Director may require the licensee to submit written statements under oath.

(3) The license will be terminated only on the full implementation of the final closure plan, including post-closure observation and maintenance, as approved by the Director.

(4) The licensee shall submit to the provisions of the Act now or hereafter in effect, and to all findings and orders of the Director. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, and orders issued in accordance with the terms of the Act and these rules.

(5) Persons licensed by the Director pursuant to Rule R313-25 shall confine possession and use of the materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the Director has inspected the land disposal facility and has found it to conform with the description, design, and construction described in the application for a license.

(7) The Director may incorporate, by rule or order, into licenses at the time of issuance or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as the Director deems appropriate or necessary in order to:

(a) protect health or to minimize danger to life or property;

(b) require reports and the keeping of records, and to provide for inspections of licensed activities as the Director deems necessary or appropriate to effectuate the purposes of the

Radiation Control Act and Rules.

(8) The authority to dispose of wastes expires on the expiration date stated in the license. An expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for implementing site closure, post-closure observation, and transfer of the license to the site owner.

R313-25-14. Application for Renewal or Closure.

(1) An application for renewal or an application for closure under Section R313-25-15 shall be filed at least 90 days prior to license expiration.

(2) Applications for renewal of a license shall be filed in accordance with Sections R313-25-5 and R313-25-7 through 25-11. Applications for closure shall be filed in accordance with Section R313-25-15. Information contained in previous applications, statements, or reports filed with the Director under the license may be incorporated by reference if the references are clear and specific.

(3) If a licensee has filed an application in proper form for renewal of a license, the license shall not expire unless and until the Director has taken final action to deny application for renewal.

(4) In evaluating an application for license renewal, the Director will apply the criteria set forth in Section R313-25-12.

R313-25-15. Contents of Application for Site Closure and Stabilization.

(1) Prior to final closure of the disposal site, or as otherwise directed by the Director, the licensee shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included in the original license application submitted and approved under Section R313-25-8(7). The plan shall include the following:

(a) additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) the results of tests, experiments, or other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or other tests, experiments, or analyses pertinent to the long-term containment of emplaced waste within the disposal site;

(c) proposed revision of plans for:

(i) decontamination or dismantlement of surface facilities;

(ii) backfilling of excavated areas; or

(iii) stabilization of the disposal site for post-closure care.

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with Subsection R313-25-15(1), the Director shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of Rule R313-25 will be met.

R313-25-16. Post-Closure Observation and Maintenance.

The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the Director in accordance with Section R313-25-17. The licensee shall remain responsible for the disposal site for an additional five years. The Director may approve closure plans that provide for shorter or longer time periods of post-closure observation and maintenance, if sufficient rationale is developed for the variance.

R313-25-17. Transfer of License.

Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the Director finds:

- (1) that the disposal site was closed according to the licensee's approved disposal site closure plan;
- (2) that the licensee has provided reasonable assurance that the performance objectives of Rule R313-25 have been met;
- (3) that funds for care and records required by Subsections R313-25-33(4) and (5) have been transferred to the disposal site owner;
- (4) that the post-closure monitoring program is operational and can be implemented by the disposal site owner; and
- (5) that the Federal or State agency which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Subsection R313-25-12(8) will be met.

R313-25-18. Termination of License.

- (1) Following the period of institutional control needed to meet the requirements of Section R313-25-12, the licensee may apply for an amendment to terminate the license.
- (2) This application will be reviewed in accordance with the provisions of Section R313-22-32.
- (3) A license shall be terminated only when the Director finds:
 - (a) that the institutional control requirements of Subsection R313-25-12(8) have been met;
 - (b) that additional requirements resulting from new information developed during the institutional control period have been met;
 - (c) that permanent monuments or markers warning against intrusion have been installed; and
 - (d) that records required by Subsections R313-25-33(4) and (5) have been sent to the party responsible for institutional control of the disposal site and a copy has been sent to the Director immediately prior to license termination.

R313-25-19. General Requirement.

Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals do not exceed the limits stated in Sections R313-25-20 and 25-23.

R313-25-20. Protection of the General Population from Releases of Radioactivity.

Concentrations of radioactive material which may be released to the general environment in ground water, surface water, air, soil, plants or animals shall not result in an annual dose exceeding an equivalent of 0.25 mSv (0.025 rem) to the whole body, 0.75 mSv (0.075 rem) to the thyroid, and 0.25 mSv (0.025 rem) to any other organ of any member of the public. No greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to any member of the public shall come from groundwater. Reasonable efforts should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable.

R313-25-21. Protection of Individuals from Inadvertent Intrusion.

Design, operation, and closure of the land disposal facility shall ensure protection of any individuals inadvertently intruding into the disposal site and occupying the site or contacting the waste after active institutional controls over the disposal site are removed.

R313-25-22. Protection of Individuals During Operations.

Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in Rule R313-15 of these rules, except for release of radioactivity in effluents from the land disposal facility, which shall be governed by Section R313-25-20. Every reasonable effort should be made to maintain radiation exposures as low as is reasonably achievable, ALARA.

R313-25-23. Stability of the Disposal Site After Closure.

The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate, to the extent practicable, the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

R313-25-24. Disposal Site Suitability Requirements for Land Disposal - Near-Surface Disposal.

- (1) The primary emphasis in disposal site suitability is given to isolation of wastes and to disposal site features that ensure that the long-term performance objectives are met.
- (2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.
- (3) Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of Rule R313-25.
- (4) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of Rule R313-25.
- (5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "Floodplain Management Guidelines."
- (6) Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.
- (7) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Director will consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.
- (8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.
- (9) Areas shall be avoided where tectonic processes such as faulting, folding, seismic activity, vulcanism, or similar phenomena may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of Rule R313-25 or may preclude defensible modeling and prediction of long-term impacts.
- (10) Areas shall be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with sufficient such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of Rule R313-25, or may preclude defensible modeling and prediction of long-term impacts.
- (11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of Rule R313-25 or significantly mask the environmental monitoring program.

R313-25-25. Disposal Site Design for Near-Surface Land

Disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives will be met.

(3) The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives will be met.

(4) Covers shall be designed to minimize, to the extent practicable, water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

R313-25-26. Near Surface Land Disposal Facility Operation and Disposal Site Closure.

(1) Wastes designated as Class A pursuant to Section R313-15-1009 of these rules shall be segregated from other wastes by placing them in disposal units which are sufficiently separated from disposal units for the other waste classes so that any interaction between Class A wastes and other wastes will not result in the failure to meet the performance objectives of Rule R313-25. This segregation is not necessary for Class A wastes if they meet the stability requirements of Subsection R313-15-1009(2)(b).

(2) Wastes designated as Class C pursuant to Section R313-15-1009 shall be disposed of so that the top of the waste is a minimum of five meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in Subsection R313-25-1(1), only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. Wastes shall be disposed of in accordance with the requirements of Subsections R313-25-26(4) through 11.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of Section R313-15-105 at the time the license is transferred pursuant to Section R313-25-17.

(7) The boundaries and locations of disposal units shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in such a way that the boundaries of the units can be easily defined. Three permanent survey marker control points, referenced to United States Geological Survey or National Geodetic Survey control stations, shall be established on the site to facilitate surveys. The United States Geological Survey or National Geodetic Survey control stations shall provide horizontal and vertical controls as checked against United States Geological Survey or National Geodetic Survey record files.

(8) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Subsection R313-25-27(4) and take mitigative measures if needed.

(9) Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as the disposal units are filled and covered.

(10) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(11) Only wastes containing or contaminated with radioactive material shall be disposed of at the disposal site.

(12) Proposals for disposal of waste that are not generally acceptable for near-surface disposal because the wastes form and disposal methods shall be different and, in general, more stringent than those specified for Class C waste, may be submitted to the Director for approval.

R313-25-27. Environmental Monitoring.

(1) At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data shall cover at least a 12-month period.

(2) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and need for mitigative measures. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of waste which would indicate that the performance objectives may not be met.

R313-25-28. Alternative Requirements for Design and Operations.

The Director may, upon request or on the Director's own initiative, authorize provisions other than those set forth in Sections R313-25-25 and 25-27 for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of Rule R313-25.

R313-25-29. Institutional Requirements.

(1) Land Ownership. Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

(2) Institutional Control. The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional control program shall also include, but not be limited to, conducting an environmental monitoring program at

the disposal site, periodic surveillance, minor custodial care, and other equivalents as determined by the Director, and administration of funds to cover the costs for these activities. The period of institutional controls will be determined by the Director, but institutional controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

R313-25-30. Applicant Qualifications and Assurances.

The applicant shall show that it either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

R313-25-31. Funding for Disposal Site Closure and Stabilization.

(1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

(a) decontamination or dismantlement of land disposal facility structures, and

(b) closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Director approved cost estimates reflecting the Director approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the Director will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies or local governmental bodies for decontamination, closure, and stabilization. The Director will accept these arrangements only if they are considered adequate to satisfy the requirements of Section R313-25-31 and if they clearly identify that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(3) The licensee's financial or surety arrangement shall be submitted annually for review by the Director to assure that sufficient funds will be available for completion of the closure plan.

(4) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the Director; the beneficiary, the site owner; and the principal, the licensee, not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee shall submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Director, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on surety instruments.

(7) Financial or surety arrangements generally acceptable to the Director include surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or other types of arrangements as may be approved by the Director. Self-insurance, or an arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the Director, and the license has been transferred to the site owner.

R313-25-32. Financial Assurances for Institutional Controls.

(1) Prior to the issuance of the license, the applicant shall provide for Director approval, a binding arrangement, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed annually by the Director to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in Subsection R313-25-32(1) relevant to institutional control shall be submitted to the Director for prior approval.

R313-25-33. Maintenance of Records, Reports, and Transfers.

(1) Licensees shall maintain records and make reports in connection with the licensed activities as may be required by the conditions of the license or by the rules and orders of the Director.

(2) Records which are required by these rules or by license conditions shall be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in Subsection R313-25-33(4) as a condition of license termination unless the Director otherwise authorizes their disposition.

(3) Records which shall be maintained pursuant to Rule R313-25 may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing copy that is clear and legible at the end of the required retention period.

(4) Notwithstanding Subsections R313-25-33(1) through (3), copies of records of the location and the quantity of wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State Governor, and other state, local, and federal governmental agencies as designated by the Director at the time of license termination.

(5) Following receipt and acceptance of a shipment of waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the condition of the waste packages as received, discrepancies between the materials listed on the manifest and those received, the volume of any pallets, bracing, or other

shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and evidence of leakage or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and Director regulations or rules. The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the Director as a license condition.

(6) Licensees authorized to dispose of waste received from other persons shall file a copy of their financial report or a certified financial statement annually with the Director in order to update the information base for determining financial qualifications.

(7)(a) Licensees authorized to dispose of waste received from other persons, pursuant to Rule R313-25, shall submit annual reports to the Director. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

(i) specification of the quantity of each of the principal contaminants released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(ii) the results of the environmental monitoring program;

(iii) a summary of licensee disposal unit survey and maintenance activities;

(iv) a summary, by waste class, of activities and quantities of radionuclides disposed of;

(v) instances in which observed site characteristics were significantly different from those described in the application for a license; and

(vi) other information the Director may require.

(c) If the quantities of waste released during the reporting period, monitoring results, or maintenance performed are significantly different from those predicted, the report shall cover this specifically.

(8) In addition to the other requirements in Section R313-25-33, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(a) The manifest information that must be electronically stored is:

(i) that required in Appendix G of 10 CFR 20.1001 to 20.2402, (2006), which is incorporated into these rules by reference, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

(ii) that information required in Subsection R313-25-33(5).

(b) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

R313-25-34. Tests on Land Disposal Facilities.

Licensees shall perform, or permit the Director to perform, any tests the Director deems appropriate or necessary for the administration of the rules in Rule R313-25, including, but not limited to, tests of:

(1) wastes;

(2) facilities used for the receipt, storage, treatment, handling or disposal of wastes;

(3) radiation detection and monitoring instruments; or

(4) other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of waste.

R313-25-35. Director Inspections of Land Disposal Facilities.

(1) Licensees shall afford to the Director, at reasonable times, opportunity to inspect waste not yet disposed of, and the premises, equipment, operations, and facilities in which wastes

are received, possessed, handled, treated, stored, or disposed of.

(2) Licensees shall make available to the Director for inspection, upon reasonable notice, records kept by it pursuant to these rules. Authorized representatives of the Director may copy and take away copies of, for the Director's use, any records required to be kept pursuant to Rule R313-25.

KEY: radiation, radioactive waste disposal, depleted uranium

April 3, 2014

19-3-104

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19-3-108

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 (2013), 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. 70.23;

(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. 20.1906 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;

(n) Rules R313-15, R313-18, and R313-38 for corresponding references to:

(i) Parts 19, 20, and 39 of this chapter;

(ii) A copy of parts 19, 20, and 39 of NRC regulations.

KEY: radioactive materials, well logging, surveys, subsurface tracer studies

April 7, 2014

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19-3-108

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-1. Utah Medicaid Program.****R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

The Department incorporates the January 1, 2014 versions of the following by reference:

(1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Services Utah Medicaid Provider Manual;

(6) Audiology Services Utah Medicaid Provider Manual;

(7) Hospice Care Utah Medicaid Provider Manual;

(8) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(9) Personal Care Utah Medicaid Provider Manual with its attachments;

(10) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual;

(11) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(16) Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual;

(17) Office of Inspector General Administrative Hearings Procedures Manual;

(18) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(19) Coverage and Reimbursement Code Look-up Tool for Utah Medicaid Provider Manual; <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>;

(20) Certified Nurse - Midwife Services Utah Medicaid Provider Manual;

(21) CHEC Services Utah Medicaid Provider Manual with its attachments;

(22) Chiropractic Medicine Utah Medicaid Provider Manual;

(23) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(24) General Attachments for the Utah Medicaid Provider Manual;

(25) Indian Health Utah Medicaid Provider Manual;

(26) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(27) Medical Transportation Utah Medicaid Provider Manual;

(28) Mental Health Centers/Prepaid Mental Health Plans Utah Medicaid Provider Manual;

(29) Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments;

(30) Certified Family Nurse Practitioner and Pediatric Nurse Practitioner Utah Medicaid Provider Manual;

(31) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual;

(32) Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments;

(33) Podiatric Services Utah Medicaid Provider Manual;

(34) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(35) Psychology Services Utah Medicaid Provider Manual;

(36) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(37) Rehabilitative Mental Health Services for Children Under Authority of Department of Human Services, Division of Child and Family Services or Division of Juvenile Justice Services Utah Medicaid Provider Manual;

(38) Rural Health Clinic Services Utah Medicaid Provider Manual with its attachments;

(39) School-Based Skills Development Services Utah Medicaid Provider Manual;

(40) Section I: General Information of the Utah Medicaid Provider Manual;

(41) Services for Pregnant Women Utah Medicaid Provider Manual;

(42) Substance Abuse Treatment Services and Targeted Case Management Services for Substance Abuse Utah Medicaid Provider Manual;

(43) Targeted Case Management for CHEC Medicaid Eligible Children Utah Medicaid Provider Manual;

(44) Targeted Case Management for the Chronically Mentally Ill Utah Medicaid Provider Manual;

(45) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual; and

(46) Vision Care Services Utah Medicaid Provider Manual.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services;

(i) intermittent or part-time nursing services provided by

a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases;

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

(2) An alien who is prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on his Medical Identification Card, as noted in Rule R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Superior System Waiver in effect at the time service was rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or

(c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

(e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce

Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to

what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Cost Sharing.

(1) An enrollee is responsible to pay the:

(a) hospital a \$220 coinsurance per year;
(b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;

(c) provider a \$3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and

(d) pharmacy a \$3 copayment per prescription up to a maximum of \$15 per month;

(2) The out-of-pocket maximum payment for copayments for physician and outpatient services is \$100 per year.

(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.

(4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;

(a) children;
(b) pregnant women;
(c) institutionalized individuals;
(d) American Indians; and
(e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.

R414-1-29. Provider-Preventable Conditions.

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable

conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

- (a) Rule R380-200;
- (b) Rule R380-210;
- (c) Rule R386-705;
- (d) Rule R428-10; and
- (e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

KEY: Medicaid

May 1, 2014

Notice of Continuation March 2, 2012

26-1-5

26-18-3

26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-61. Home and Community-Based Services Waivers.****R414-61-1. Introduction and Authority.**

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, effective July 1, 2013;

(2) Waiver for Individuals Age 65 or Older, effective July 1, 2010;

(3) Waiver for Individuals with Acquired Brain Injuries, effective July 1, 2009;

(4) Waiver for Individuals with Physical Disabilities, effective July 1, 2011;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective July 1, 2010;

(6) New Choices Waiver, effective July 1, 2010.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Medicaid and Health Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid**April 21, 2014****26-18-3****Notice of Continuation February 24, 2010**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-304. Income and Budgeting.****R414-304-1. Authority and Purpose.**

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish the income eligibility criteria for determining eligibility for medical assistance programs.

R414-304-2. Definitions.

(1) The definitions in Rule R414-1, Rule R414-301, and Rule R414-303 apply to this rule. In addition:

(a) "Aid to Families with Dependent Children" (AFDC) means a State Plan for aid that was in effect on June 16, 1996.

(b) "Allocation for a spouse" means an amount of income that is the difference between the Social Security Income (SSI) federal benefit rate for a couple minus the federal benefit rate for an individual.

(c) "Basic maintenance standard" or "BMS" means the income level for eligibility for Medicaid coverage of the medically needy based on the number of family members who are counted in the household size.

(d) "Benefit month" means a month or any portion of a month for which an individual is eligible for medical assistance.

(e) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(f) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(g) "Eligible spouse" means the member of a married couple who is either aged, blind or disabled.

(h) "Factoring" means that the eligibility agency calculates the monthly income by prorating income to account for months when an individual receives a fifth payment when paid weekly, or a third paycheck with paid every other week. Weekly income is factored by multiplying the weekly income amount by 4.3 to obtain a monthly amount. Income paid every other week is factored by multiplying the bi-weekly income by 2.15 to obtain a monthly amount.

(i) "Family Medicaid" means medical assistance for families caring for dependent children and is a general term used to refer to Medicaid coverage for medically needy parents, caretaker relatives, pregnant women, and children.

(j) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse, the spouse of the client, and the parents of a dependent child.

(k) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(l) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(m) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(n) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(o) "Income anticipating" means using current facts regarding rate of pay and number of working hours, and reasonably expected future income changes, to anticipate future

monthly income.

(p) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(q) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(r) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(s) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed one-third of the SSI federal benefit rate plus \$20.

(t) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

R414-304-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, April 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 2013, to determine income and income deductions for Medicaid eligibility. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(3) The eligibility agency may not count Veteran's Administration (VA) payments for aid and attendance or the portion of a VA payment that an individual makes because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the \$20 general income disregard.

(4) The eligibility agency may only count as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent family member as determined by the VA, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent applies to VA to receive the payment directly, VA denies that request, and the dependent does not receive the payment. In that case, the eligibility agency shall also count the amount for a dependent as income of the veteran or surviving spouse who receives the payment.

(5) The eligibility agency may not count as income Social Security Administration (SSA) reimbursements of Medicare premiums.

(6) The eligibility agency may not count as income the value of special circumstance items if the items are paid for by donors.

(7) For aged, blind and disabled Medicaid, the eligibility agency shall count as income two-thirds of current child support that an individual receives in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-

kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

(8) The eligibility agency shall count as income of the child, child support payments received from a parent or guardian for past months or years.

(9) The agency shall use countable income of the parent to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.

(10) For aged, blind and disabled Institutional Medicaid, court-ordered child support payments collected by the Office of Recovery Services (ORS) for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the child. If ORS allows the parent to retain up to the amount of the personal needs allowance for the child's personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

(11) The eligibility agency shall count as unearned income the interest earned from a sales contract on either or both the lump sum and installment payments when the interest is received or made available to the client.

(12) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(13) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules. Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not lump sum payments.

(14) The eligibility agency may not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs, and may not count any other grants, scholarships, fellowships, or gifts that a client uses to pay for education. The eligibility agency shall count as income, in the month that the client receives them, any amount of grants, scholarships, fellowships, or gifts that the client uses to pay for non-educational expenses. Allowable educational expenses include:

- (a) tuition;
- (b) fees;
- (c) books;
- (d) equipment;
- (e) special clothing needed for classes;
- (f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount; and
- (g) child care necessary for school attendance.

(15) Except for an individual eligible for the Medicaid Work Incentive (MWI) program, the following provisions apply to non-institutional medical assistance:

(a) For aged, blind and disabled Medicaid, the eligibility agency may not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind or disabled person has more income after deductions than the allocation for a spouse, the eligibility agency shall deem the spouse's income

to the aged, blind or disabled spouse to determine eligibility.

(c) The eligibility agency shall determine household size and whose income counts for aged, blind and disabled Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) The eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The eligibility agency shall compare the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the eligibility agency shall compare the combined income, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the eligibility agency may not count the ineligible spouse's income and may not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the eligibility agency shall combine the income of both spouses and compare to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount and one spouse receives SSI, the eligibility agency may only compare the income of the non-SSI spouse, after allowable deductions, to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, the eligibility agency shall compare the income of both spouses, after allowable deductions, to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the eligibility agency shall deem income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, the eligibility agency may only count the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If the countable income exceeds the limit, the eligibility agency shall compare the income, after allowable deductions, to the BMS.

(I) If the non-covered spouse has income to deem to the covered spouse, the eligibility agency shall compare the countable income, after allowable deductions, to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have income to deem to the covered spouse, the eligibility agency may only compare the covered spouse's income, after allowable deductions, to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind or disabled and not working, and neither spouse is

an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the MWI program. If both spouses want coverage, however, the eligibility agency shall first determine eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(d) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the eligibility agency shall not deem income from a spouse who meets 1619(b) protected group criteria.

(e) The eligibility agency shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below:

(i) If both spouses receive Part A Medicare and both want coverage, the eligibility agency shall combine income of both spouses and compare it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare and the other spouse is aged, blind or disabled and does not receive Part A Medicare or does not want coverage, then the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the eligibility agency shall compare the countable income to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency shall combine countable income to the applicable percentage of the federal poverty guideline for a two-person household. If the deemed income of the ineligible spouse does not exceed the allocation for a spouse, only the eligible spouse's income is counted and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) The eligibility agency may not count SSI income to determine eligibility for QMB, SLMB or QI assistance.

(f) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the eligibility agency may not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(16) For Institutional Medicaid, the eligibility agency may only count the client in the household size. Only the client's income and deemed income from an alien client's sponsor is counted to determine the cost of care contribution. The provisions in Rule R414-307 govern who to include in the household size and whose income is counted to determine eligibility for home and community-based waiver services and the cost-of-care contribution.

(17) The eligibility agency shall deem any unearned and earned income from an alien's sponsor and the sponsor's spouse when the sponsor signs an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall end sponsor deeming when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act, or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants who are eligible for Medicaid for emergency

services only.

(18) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count as income the amount that is paid to the individual.

(19) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(20) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409, Pub. L. 112 240.

(21) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-4. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, and Appendix to Subpart K of 416, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws, effective January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency shall allow the provisions found in Subsection R414-304-3(3) through (14), and (17) through (21).

(3) The eligibility agency shall determine income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(4) For the MWI program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other MWI program eligibility factors are eligible without paying a Medicaid buy-in premium.

(5) The eligibility agency shall determine household size and whose income counts for the MWI program as described below:

(a) If the MWI program individual is an adult and is not living with a spouse, the eligibility agency may only count the income of the individual. The eligibility agency shall include in the household size, any children of the individual who are under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income to 250% of the federal poverty guideline for the household size involved.

(b) If the MWI program individual is living with a spouse,

the eligibility agency shall combine their income before allowing any deductions. The eligibility agency shall include in the household size the spouse and any children of the individual or spouse under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the MWI program individual is a child living with a parent, the eligibility agency shall combine the income of the MWI program individual and the parents before allowing any deductions. The eligibility agency shall include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-5. MAGI-Based Coverage Groups.

(1) The Department adopts and incorporates by reference 42 CFR 435.603, October 1, 2012 ed., which applies to the methodology of determining household composition and income using the Modified Adjusted Gross Income (MAGI)-based methodology.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The eligibility agency elects the option in 42 CFR 435.603(f)(3)(iv)(B).

(2) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(4) The eligibility agency shall count as income cash support received by an individual when:

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer; and

(c) the cash support exceeds a nominal amount set by the Department.

(5) To determine eligibility for MAGI-based coverage groups, the eligibility agency deducts an amount equal to 5% of the federal poverty guideline for the applicable household size from the MAGI-based household income determined for the individual. This deduction is allowed only to determine eligibility for the eligibility group with the highest income standard for which the individual may qualify.

R414-304-6. Unearned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), 233.20(a)(4)(ii), October 1, 2012 ed., and Subsection 404(h)(4) of the Compilation of the Social Security Laws, in effect January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count as income money loaned to the individual if the individual proves the money is

from a loan that the individual is expected to repay.

(3) The eligibility agency may not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

(4) The eligibility agency may not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(5) The eligibility agency may not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to \$30 a calendar quarter per household member. Any amount that exceeds \$30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(6) The eligibility agency may not count as income the amount deducted from benefit income to repay an overpayment.

(7) The eligibility agency may not count as income the value of special circumstance items paid for by donors.

(8) The eligibility agency may not count as income payments for home energy assistance.

(9) The eligibility agency may not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the eligibility agency may only count the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(10) The eligibility agency may not count as income SSA reimbursements of Medicare premiums.

(11) The eligibility agency may not count as income payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program. To determine eligibility for medically needy Medicaid, the eligibility agency shall count income that the client receives to determine the amount of these payments, unless the income is an excluded income for medical assistance programs under other laws or regulations.

(12) The eligibility agency may not count as income interest or dividends earned on countable resources. The eligibility agency may not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(13) The eligibility agency may not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

(14) The eligibility agency shall count as income SSI and State Supplemental payments received by children who are included in the coverage under medically needy Medicaid programs for families, pregnant women and children.

(15) The eligibility agency shall count unearned rental income. The eligibility agency shall deduct \$30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the eligibility agency shall deduct the greater of either \$30 or the following actual expenses that the client can verify:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(16) The eligibility agency shall count deferred income when the client receives the income, the client does not defer the

income by choice, and the client reasonably expects to receive the income. If the client defers the income by choice, the agency shall count the income according to when the client could receive the income. The eligibility agency shall count as income the amount deducted from income to pay for benefits like health insurance, medical expenses or child care in the month that the client could receive the income.

(17) The eligibility agency shall count the amount deducted from income to pay an obligation of child support, alimony or debts in the month that the client could receive the income.

(18) The eligibility agency shall count payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(19) The eligibility agency may only count as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent family member as determined by the VA, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent applies to VA to receive the payment directly, VA denies that request, and the dependent does not receive the payment. In that case, the eligibility agency shall also count the amount for a dependent as income of the veteran or surviving spouse who receives the payment.

(20) The eligibility agency shall count as income deposits to financial accounts jointly-owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the eligibility agency may not count those funds as income. The eligibility agency may require the client to terminate access to the jointly-held accounts.

(21) The eligibility agency shall count as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(22) The eligibility agency shall count current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the agency shall divide that amount equally among the children unless a court order indicates otherwise. Child support payments received by a parent or guardian to repay amounts owed for past months or years are countable income to determine eligibility of the parent or guardian who receives the payments. If ORS collects current child support, the eligibility agency shall count the child support as current even if ORS mails the payment to the client after the month it is collected.

(23) The eligibility agency shall count payments from annuities as unearned income in the month that the client receives the payments.

(24) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count the amount paid to the individual.

(25) The eligibility agency shall deem both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall stop deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming

to applicants who are eligible for emergency services only.

(26) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(27) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112 240, 126, Stat. 2313.

(28) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-7. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Earned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1110 through 416.1112, April 1, 2012 ed. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) If an SSI recipient has a plan for achieving self-support approved by the (SSA), the eligibility agency may not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self-support goals. This income may include earned and unearned income.

(3) The eligibility agency may not deduct from income expenses relating to the fulfillment of a plan to achieve self-support.

(4) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count earned income used to compute a needs-based grant.

(5) For aged, blind and disabled Institutional Medicaid, the eligibility agency shall deduct \$125 from earned income before it determines contribution towards cost of care.

(6) The eligibility agency shall include capital gains in the gross income from self-employment.

(7) To determine countable net income from self-employment, the eligibility agency shall allow a 40% flat rate exclusion off the gross self-employment income as a deduction for business expenses. For a self-employed individual who has allowable business expenses greater than the 40% flat rate exclusion amount and who also provides verification of the expenses, the eligibility agency shall calculate the self-employment net profit amount by using the deductions that are allowed under federal income tax rules.

(8) The eligibility agency may not allow deductions for the following business expenses:

- (a) transportation to and from work;
- (b) payments on the principal for business resources;
- (c) net losses from previous tax years;
- (d) taxes;
- (e) money set aside for retirement; and
- (f) work-related personal expenses.

(9) The eligibility agency may deduct net losses of self-employment from the current tax year from other earned income.

(10) The eligibility agency shall disregard earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541. The eligibility agency shall also exclude this income for individuals described in Subsections 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XIII) and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

(11) The eligibility agency shall count deductions from earned income that include insurance premiums, savings, garnishments, or deferred income in the month when the client could receive the funds.

R414-304-8. Earned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811, 435.831, October 1, 2012 ed., and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), October 1, 2012 ed. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count the income of a dependent child if the child is:

(a) in school or training full-time;

(b) in school or training part-time, which means the child is enrolled for at least half of the hours needed to complete a course, or is enrolled in at least two classes or two hours of school a day and employed less than 100 hours a month; or

(c) is in a job placement under the federal Workforce Investment Act.

(3) For medically needy Family Medicaid, the eligibility agency shall allow the AFDC \$30 and one-third of earned income deduction if the wage earner receives Parent/Caretaker Relative Medicaid in one of the four previous months and this disregard is not exhausted.

(4) The eligibility agency shall determine countable net income from self-employment by allowing a 40 % flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 % flat rate exclusion amount, the eligibility agency shall allow actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(5) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(6) For Family Medicaid, the eligibility agency shall deduct from the income of clients who work at least 100 hours in a calendar month a maximum of \$200 a month in child care costs for each child who is under the age of two and \$175 a month in child care costs for each child who is at least two years of age. The maximum deduction of \$175 shall also apply to provide care for an incapacitated adult. The eligibility agency shall deduct from the income of clients who work less than 100 hours in a calendar month a maximum of \$160 a month in child care costs for each child who is under the age of two and \$140 a month for each child who is at least two years of age. The

maximum deduction of \$140 a month shall also apply to provide care for an incapacitated adult.

(7) For Family Institutional Medicaid, the eligibility agency shall deduct a maximum of \$160 in child care costs from the earned income of clients who work at least 100 hours in a calendar month. The eligibility agency shall deduct a maximum of \$130 in child care costs from the earned income of clients working less than 100 hours in a calendar month.

(8) The eligibility agency shall exclude earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.301(b)1, 435.308, 435.310 and individuals defined in Title XIX of the Social Security Act Section 1902(e)(1), (7), and Section 1925. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

R414-304-9. Aged, Blind and Disabled Non-Institutional Medicaid and Medically Needy Family, Pregnant Woman and Child Non-Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601, and the deductions defined in 42 CFR 435.831, October 1, 2012 ed.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii), (iv), and (v), described more fully in 42 CFR 435.320, .322 and .324, the eligibility agency shall deduct from income an amount equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size to determine the spenddown amount.

(3) To determine eligibility for and the amount of a spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums the client or a financially responsible family member pays providing coverage for the client or any family members living with the client in the month of payment. The eligibility agency shall also deduct from income the amount of a health insurance premium the month it is due when the Department pays the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Compilation of the Social Security Laws, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(a) The eligibility agency shall deduct the entire payment in the month it is due and may not prorate the amount.

(b) The eligibility agency may not deduct health insurance premiums to determine eligibility for the poverty-related medical assistance programs or coverage groups subject to the use of MAGI-based methodologies.

(4) To determine the spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums that the client or a financially responsible family member pays in the application month or during the three-month retroactive period. The eligibility agency shall allow the deduction either in the month paid or in any month after the month paid to the extent the full amount was not deducted in the month paid, but only through the month of application.

(5) To determine eligibility for medically needy coverage groups, the eligibility agency shall deduct from income medically necessary expenses that the client verifies only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, a client's spouse, a parent of a dependent client, a dependent sibling of a dependent client, a deceased spouse, or a deceased dependent child;

(b) Medicaid does not cover the medical bill and it is not payable by a third party;

(c) The medical bill remains unpaid or the client receives

and pays for the medical service during the month of application or during the three months immediately preceding the date of application. The date that the medical service is provided on an unpaid expense is irrelevant if the client still owes the provider for the service. Bills for services that the client receives and pays for during the application month or the three months preceding the date of application can be used as deductions only through the month of application.

(6) The eligibility agency may not allow a medical expense as a deduction more than once.

(7) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(8) The eligibility agency shall deduct medical expenses in the order required by 42 CFR 435.831(h)(1). When expenses have the same priority, the eligibility agency shall deduct paid expenses before unpaid expenses.

(9) A client who pays a cash spenddown may present proof of medical expenses paid during the coverage month and request a refund of spenddown paid up to the amount of bills paid by the client. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The Department may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown when the client assumes responsibility to pay that expense;

(d) A refund cannot exceed the actual cash spenddown amount paid by the client;

(e) The Department may not refund spenddown amounts that a client pays based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use the unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce the refund amount by the amount of any unpaid obligation that the client owes the Department.

(10) For poverty-related coverage groups and coverage groups subject to the MAGI-based methodologies, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct medical costs from income to determine eligibility for poverty-related or MAGI-based medical assistance programs. An individual may not pay the difference between countable income and the applicable income limit to become eligible for poverty-related or MAGI-based medical assistance programs.

(11) When a client must meet a spenddown to become eligible for a medically needy program, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client

money for the client to pay the spenddown.

(12) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(13) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(14) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(15) For non-institutional Medicaid programs, the eligibility agency may only deduct medically necessary expenses. The Department determines whether services for institutional care are medically necessary.

(16) The eligibility agency may not require a client to pay a spenddown of less than \$1.

(17) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-10. Medicaid Work Incentive Program Income Deductions.

(1) To determine eligibility for the MWI program, the eligibility agency shall deduct the following amounts from income to determine countable income that is compared to 250% of the federal poverty guideline:

(a) \$20 from unearned income. If there is less than \$20 in unearned income, the eligibility agency shall deduct the balance of the \$20 from earned income;

(b) Impairment-related work expenses;

(c) \$65 plus one-half of the remaining earned income;

(d) A current year loss from a self-employment business can be deducted only from other earned income.

(2) For the MWI program, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct health insurance premiums and medical costs from income before comparing countable income to the applicable limit.

(3) The eligibility agency shall deduct from countable income the amount of health insurance premiums paid by the MWI-eligible individual or a financially responsible household member, to purchase health insurance for himself or other

family members in the household before determining the MWI buy-in premium.

(4) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the eligibility agency. The client may not meet the MWI premium with medical expenses.

(5) The eligibility agency may not require a client to pay a MWI buy-in premium of less than \$1.

R414-304-11. Aged, Blind and Disabled Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, and 435.832, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the eligibility agency shall deduct from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. The eligibility agency shall deduct health insurance premiums in the month the payment is due. The eligibility agency shall deduct the amount of a health insurance premium for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(b) The eligibility agency shall deduct from income the portion of a combined premium attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member. The client's portion must be paid from the funds of the institutionalized or waiver-eligible client.

(3) The eligibility agency may only deduct medical expenses from income under the following conditions:

(a) the client receives the medical service;

(b) Medicaid or a third party will not pay the medical bill;

(c) a paid medical bill can only be deducted through the month of payment. No portion of any paid bill can be deducted after the month of payment.

(4) To determine the cost of care contribution for long-term care services, the eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying when the client incurs the expenses for the transfer of assets for less than fair market value. The eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying under Section 1917(f) of the Social Security Act in effect January 1, 2013, when the equity value of the individual's home exceeds the limit set by law. The eligibility agency may not deduct the expenses during or after the month that the client receives the services even when the expenses remain unpaid.

(5) The eligibility agency may not allow a medical expense as an income deduction more than once.

(6) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(7) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(8) When a client must meet a spenddown to become

eligible for a medically needy program or receive Medicaid under a home and community based care waiver, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(9) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(10) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(11) The eligibility agency shall require institutionalized clients to pay all countable income remaining after allowable income deductions to the institution in which they reside as their cost of care contribution.

(12) A client who pays a cash spenddown or a cost-of-care amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or cost-of-care paid up to the amount of bills. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The eligibility agency may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown or to reduce his cost-of-care to the institution when the client assumes that payment responsibility;

(d) A refund cannot exceed the actual cash spenddown or cost-of-care amount paid by the client;

(e) The eligibility agency may not refund spenddown or cost-of-care amounts paid by a client based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use these unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce a refund by the amount of

any unpaid obligation that the client owes the Department.

(13) The eligibility agency shall deduct a personal needs allowance for residents of medical institutions equal to \$45.

(14) When a doctor verifies that a single person or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the eligibility agency shall deduct a personal needs allowance equal to the BMS for one person defined in Subsection R414-304-13(6), for up to six months to maintain the individual's community residence.

(15) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(16) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-12. Budgeting.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.640, October 1, 2012 ed., and 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, October 1, 2012 ed., relating to financial responsibility and budgeting for non-MAGI-based Medicaid coverage groups.

(2) The Department adopts and incorporates by reference, 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2012 ed., relating to household income and budgeting for MAGI-based Medicaid coverage groups.

(3) The eligibility agency shall do prospective budgeting to determine a household's expected monthly income.

(a) The eligibility agency shall include in the best estimate of MAGI-based income, reasonably predictable income changes such as seasonal income or contract income to determine the average monthly income expected to be received during the certification period.

(b) The eligibility agency shall prorate income over the eligibility period to determine an average monthly income.

(4) A best estimate of income based on the best available information is considered an accurate reflection of client income in that month.

(5) The eligibility agency shall use the best estimate of income to be received or made available to the client in a month to determine eligibility. For individuals eligible under a medically needy coverage group, the best estimate of income is used to determine the individual's spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) For non-MAGI-based coverage groups, the eligibility agency shall count income in the following manner:

(a) For QMB, SLMB, QI, MWI program, and aged, blind, disabled, and Institutional Medicaid income is counted as it is received. Income that is received weekly or every other week is not factored;

(b) For medically needy Family, Pregnant Woman and Child Medicaid programs, income that is received weekly or every other week is factored.

(8) Lump sums are income in the month received. Lump sum payments can be earned or unearned income.

(9) For non-MAGI-based coverage groups, income paid out under a contract is prorated over the time period the income is intended to cover to determine the countable income for each month. The prorated amount is used instead of actual income

that a client receives to determine countable income for a month.

(10) To determine the average monthly income for farm and self-employment income, the eligibility agency shall determine the annual income earned during one or more past years, or other applicable time period, and factors in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income is adjusted during the year when information about changes or expected changes is received by the eligibility agency.

(11) Countable educational income that a client receives other than monthly income is prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Eligibility for retroactive assistance is based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method is used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover those specific months in the retroactive period.

R414-304-13. Income Standards.

(1) The Department adopts and incorporates by reference Subsections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall calculate the aged and disabled poverty-related Medicaid income standard as 100% of the federal non-farm poverty guideline. If an aged or disabled person's income exceeds this amount, the Basic Maintenance Standard (BMS) applies unless the disabled individual or a disabled aged individual has earned income. In that case, the income standards of the MWI program apply.

(3) The income standard for the MWI for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the BMS applies.

(a) The eligibility agency shall charge a MWI buy-in premium for the MWI program when the countable income of the eligible individual's or the couple's income exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the eligibility agency shall charge a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when income is over 120% of the federal poverty guideline. The premium is calculated using only the eligible individual's or eligible couple's countable income multiplied by the applicable percentage.

(4) The income limit for parents and caretaker relatives, pregnant women, and children under the age of 19 are defined in Section R414-303-4.

(5) To determine eligibility and the spenddown amount of individuals under medically needy coverage groups, the BMS applies.

(6) The BMS is as follows:

TABLE	
Household Size	Basic Maintenance Standard (BMS)
1	382

2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-14. Aged, Blind and Disabled Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and Subsections 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall count the following individuals in the BMS for aged, blind and disabled Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for aged, blind and disabled Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemed income above the allocation for a spouse.

(3) The eligibility agency shall count the following individuals in the household size for the 100% of poverty aged or disabled Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemed income above the allocation for a spouse.

(4) The eligibility agency shall count the following individuals in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemed income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemed income above the allocation for a spouse.

(5) The eligibility agency shall count the following individuals in the household size for the MWI program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children who are under the age of 18;

(e) children who are 18, 19, or 20 years of age if they are in school full-time.

(6) Eligibility for aged, blind and disabled non-institutional Medicaid and the spenddown, if any; aged and disabled 100% poverty-related Medicaid; and QMB, SLMB, and QI programs is based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on Section R414-304-3;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the MWI program is based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is included in the BMS, it means that the eligibility agency shall count that family member as part of the household and also count his income and resources to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is included in the household size, it means that the eligibility agency shall count that family member as part of the household to determine what income limit applies, regardless of whether the agency counts that family member's income or whether that family member receives medical assistance.

R414-304-15. Medically Needy Family, Pregnant Woman and Child Medicaid Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), October 1, 2012 ed.

(2) If a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the eligibility agency shall include the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members may not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers emergency services only under other provisions of Medicaid law.

(3) The eligibility agency may exclude any unemancipated minor child from the Medicaid coverage group, and may exclude an ineligible alien child from the household size at the request of the named relative who is responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size to determine what income limit is applicable to the family. The eligibility agency may not consider income and resources of an excluded child to determine eligibility or spenddown.

(4) The eligibility agency may not include a non-parent caretaker relative in the household size of the minor child.

(5) If anyone in the household is pregnant, the eligibility agency shall include the expected number of unborn children in the household size.

(6) If the parents voluntarily place a child in foster care and in the custody of a state agency, the eligibility agency shall include the parents in the household size.

(7) The eligibility agency may not include parents in the household size who have relinquished their parental rights.

(8) If a court order places a child in the custody of the state and the state temporarily places the child in an institution, the eligibility agency may not include the parents in the household size.

(9) If the eligibility agency includes or counts a person in the household size, that family member is counted as part of the household and his income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level applies to determine eligibility for the client or family.

R414-304-16. Aged, Blind and Disabled Institutional Family Institutional Medicaid Filing Unit.

(1) For aged, blind and disabled institutional Medicaid,

the eligibility agency may not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost-of-care.

(2) For family institutional Medicaid programs, the Department adopts and incorporates by reference 45 CFR 206.10(a)(1)(vii), October 1, 2012 ed.

(3) The eligibility agency shall determine eligibility and the contribution to cost of care, which may be referred to as a spenddown, using the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997. The eligibility agency shall end sponsor deeming when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

KEY: financial disclosures, income, budgeting

April 21, 2014

26-18-3

Notice of Continuation January 23, 2013

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-310. Medicaid Primary Care Network Demonstration Waiver.****R414-310-1. Authority and Purpose.**

(1) This rule is authorized by Sections 26-1-5 and 26-18-3. The Primary Care Network Demonstration is authorized by a waiver of federal Medicaid requirements approved by the Centers for Medicare and Medicaid Services and allowed under Section 1115(a) of the Social Security Act.

(2) The purpose of this rule is to establish eligibility requirements for enrollment under the Medicaid Primary Care Network Demonstration Waiver.

R414-310-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Avenue H" means Utah's Health Insurance Marketplace for Utah employers and their employees where the employees can find information about available employer-sponsored health insurance plans, select a plan and enroll online.

(2) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Children's Health Insurance Program" or (CHIP) means the program for medical benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act.

(4) "Copayment and coinsurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

(6) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through Avenue H.

(7) "Enrollee" means an individual who has applied for and has been found eligible for the Primary Care Network program.

(8) "Open enrollment" means a period during which the eligibility agency accepts applications for the Primary Care Network program.

(9) "Primary Care Network" or (PCN) means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(10) "Review month" means the last month of the review period for an enrollee during which the eligibility agency shall redetermine eligibility for a new review period if the enrollee completes the review process timely.

(11) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility.

(12) "Utah's Premium Partnership for Health Insurance" or (UPP) means the program described in Rule R414-320.

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) The provisions of Section R414-301-4 apply to applicants and enrollees of the PCN program except that reportable changes for PCN applicants and enrollees are defined in Subsection R414-310-3(2).

(2) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. The eligibility agency shall notify the applicant at the time of application of the changes that the enrollee must report. Reportable changes include:

(a) An enrollee in PCN begins to receive coverage or to

have access to coverage under a group health plan or other health insurance coverage;

(b) An enrollee in PCN begins to receive coverage under, or begins to have access to student health insurance, Medicare, or the Veteran's Administration Health Care System;

(c) Changes in household income;

(d) Changes in household composition;

(e) Changes in tax filing status;

(f) Changes in the number of dependents claimed as tax dependents;

(g) An enrollee or the household moves out of state;

(h) Change of address of an enrollee or the household; or

(i) An enrollee enters a public institution or an institution for mental diseases.

(3) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-6 and R414-301-7.

(4) An enrollee in PCN is responsible for paying any required copayments or coinsurance amounts to providers for medical services that the enrollee receives that are covered under PCN.

R414-310-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-3, R414-302-4, R414-302-7, and R414-302-8 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to applicants and enrollees of PCN.

(2) An individual who is not a U.S. citizen or national, or who does not meet the alien status requirements of Section R414-302-3 is not eligible for any services or benefits under PCN.

(3) An individual must be at least 19 and not yet 65 years of age to enroll in PCN.

(a) The month in which an individual turns 19 years of age is the first month that the person may enroll in PCN.

(b) An individual must apply for the PCN program before he turns 65 years of age.

(c) Enrollment shall end effective the end of the month in which an individual turns 65 years of age.

(4) The eligibility agency only accepts applications during open enrollment periods. The eligibility agency limits the number it enrolls according to the funds available for the program and may stop enrollment at any time.

(a) The open enrollment period may be limited to:

(i) individuals with children under the age of 19 in the home;

(ii) individuals without children under the age of 19 in the home.

(b) The eligibility agency may not accept applications or maintain waiting lists during a period that enrollment of new individuals is stopped.

(5) The provisions of Subsection R414-302-6(1) and (4) apply to applicants and enrollees of PCN who are residents of institutions.

(6) An applicant or enrollee is not required to provide Duty of Support information to enroll in PCN. An adult whose eligibility for Medicaid has been denied or terminated for failure to cooperate with Duty of Support requirements may not enroll in the PCN program.

R414-310-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 regarding verification of eligibility factors apply to applicants and enrollees of PCN.

(2) The Department shall safeguard information about applicants and enrollees to comply with the provisions of Section R414-301-5.

(3) The Department shall enter into agreements with other

government agencies as outlined in Section R414-301-3.

R414-310-6. Creditable Health Coverage.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b) and 435.610, October 1, 2013 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2013

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage as defined in 29 CFR 2590.701-4, July 1, 2013 ed., is not eligible for enrollment in PCN. This includes coverage under student health insurance and the Veteran's Administration Health Care System.

(a) An individual who is enrolled in the Utah Health Insurance Pool or who can receive health coverage through Indian Health Services may enroll in PCN.

(b) An individual who could enroll in Medicare is not eligible for enrollment in PCN, even if the individual must wait for a Medicare open enrollment period to apply.

(c) An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for PCN as long as the individual applies for and takes all necessary steps to enroll. Eligibility for PCN ends once the individual's coverage in the VA Health Care System begins.

(d) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in PCN.

(3) An individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage through an employer or a spouse's employer is not eligible for PCN if the individual's cost for the least expensive health insurance plan offered by the employer directly, or for the employer's default plan offered through Avenue H, does not exceed 15% of the countable MAGI-based income for the individual's household.

(a) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible.

(b) The eligibility agency will include in the cost of coverage for the spouse, the cost to enroll the employee, if the employee must be enrolled to enroll the spouse.

(c) The eligibility agency considers the individual to have access to coverage if the individual has had at least one opportunity to enroll

(4) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in PCN for 180 days from the date the coverage ended. The eligibility agency shall not apply a 180-day ineligibility period in the following situations:

(a) Voluntary termination of COBRA.

(b) Voluntary termination of Utah Comprehensive Health Insurance Pool coverage.

(5) To be eligible to enroll in PCN, the 180-day ineligibility period must end by the earlier of the following dates or the eligibility agency shall deny the application:

(a) the last day of the open enrollment period during which the individual applies for PCN; or

(b) the last day of the month that follows the month in which the individual applies for PCN, if the open enrollment period does not expire before that following month ends.

(c) Enrollment in PCN may not begin before the 180-day ineligibility period ends.

R414-310-7. Household Composition and Income Provisions.

(1) The eligibility agency determines household composition and countable household income according to the provisions in R414-304-5.

(2) For an individual to be eligible to enroll in PCN, countable MAGI-based income for the individual must be equal to or less than 100% of the federal poverty guideline for the applicable household size.

R414-310-8. Budgeting.

(1) The Department shall apply the MAGI-based budgeting methodology defined at 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2013 ed., which it adopts and incorporates by reference.

(2) The eligibility agency determines an individual's eligibility prospectively at application and at each review for continuing eligibility.

(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that the agency expects the household to receive or to become available to the household during the upcoming review period.

(b) The eligibility agency shall include in the best estimate, reasonably predictable income expected to be received during the review period, such as seasonal income, contract income, income received at irregular intervals, or income received less often than monthly. The income will be prorated over the review period to determine an average monthly income.

(3) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the best estimate. The best estimate may be a monthly amount that the agency expects the household to receive each month of the review period, or an annual amount that is prorated over the review period. The eligibility agency may use different methods for different types of income that the same household receives.

(4) The eligibility agency determines farm and self-employment income by using the individual's most recent tax return forms or other verification the individual can provide. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from the most recent time period during which the individual had farm or self-employment income. The eligibility agency shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses to determine net self-employment income, if those expenses are expected to occur in the future.

(5) The eligibility agency may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-310-9. Assets.

An asset test is not required for PCN eligibility.

R414-310-10. Application and Signature.

(1) The provisions of Section R414-308-3 apply to PCN applicants, except for paragraph (9), (10) and the three months of retroactive coverage.

(2) A Medicaid or CHIP recipient may make a request during the open enrollment period for the agency to determine the individual's eligibility for PCN without completing a new application.

(3) The eligibility agency shall reinstate a medical case without requiring a new application if the agency closes the case in error.

(4) An applicant may withdraw an application for PCN any time before the eligibility agency completes an eligibility decision on the application.

R414-310-11. Eligibility Decisions and Reviews.

(1) The Department adopts and incorporates by reference 42 CFR 435.911 and 435.912, October 1, 2013 ed., regarding eligibility determinations.

(2) At application and review, the eligibility agency shall determine whether the individual is eligible for Medicaid or CHIP.

(a) An individual who qualifies for Medicaid without paying a spenddown or an MWI premium cannot enroll in PCN.

(b) An applicant who is eligible for Medicaid or CHIP during the application month, or a Medicaid or CHIP recipient who requests PCN enrollment during an open enrollment period, may enroll in PCN in accordance with Subsection R414-310-12(1).

(3) An individual open on Medicaid or UPP may request to enroll in PCN.

(a) A new application form is not required.

(b) The rules in Section R414-310-12 govern the effective date of enrollment.

(c) If the individual is moving from UPP, the eligibility agency shall waive the open enrollment requirement if there is no break in coverage.

(d) If the individual is moving from Medicaid, the eligibility agency shall waive the open enrollment period if the individual was previously on PCN, became eligible for Medicaid, and requests to reenroll in PCN without a break in coverage.

(e) If the individual is moving from Medicaid and was not previously on PCN, or there has been a break in coverage of one or more months, the individual must reapply during an open enrollment period.

(f) All other eligibility requirements must be met.

(4) The eligibility agency shall complete an eligibility determination for each application unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant dies;

(c) the applicant cannot be located; or

(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if the verification date is later.

(5) The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916.

(a) The agency may request a recipient to contact the agency to complete the eligibility review.

(b) The agency shall provide the recipient a written request for verification needed to complete the review.

(c) The agency shall provide proper notice of an adverse decision.

(d) If the agency cannot provide proper notice of an adverse decision, the agency extends eligibility to the following month to allow for proper notice.

(6) If a recipient fails to respond to a request to complete the review or fails to provide all requested verification to complete the review, the eligibility agency shall end eligibility effective the end of the month for which the agency sends proper notice to the recipient.

(a) If the recipient contacts the agency to complete the review or returns all requested verification within three calendar months of the closure date, the eligibility agency shall treat such contact or receipt of verification as a new application. The agency may not require a new application form.

(b) The application processing period applies to this request to reapply.

(c) Eligibility can begin in the month the client contacts the agency to complete the review if all verification is received within the application processing period.

(d) If the recipient fails to return the verification timely, but before the end of the three calendar months, eligibility becomes effective the first day of the month in which all verification is provided and the individual is found eligible.

(e) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(f) The eligibility agency shall waive the open enrollment

requirement during these three calendar months.

(g) If the enrollee does not respond to the request to complete the review for PCN during the three calendar months immediately following the review closure date, the enrollee must reapply for PCN and meet all eligibility criteria.

(7) If the individual files a new application or makes a request to reenroll within the calendar month that follows the effective closure date when the closure is for a reason other than incomplete review, the eligibility agency shall waive the open enrollment period and process the request as a new application.

(8) The enrollee must reapply if the case closes for one or more calendar months for any reason other than an incomplete review.

(9) The eligibility agency shall comply with the requirements of 42 CFR 435.1200(e), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-310-12. Effective Date of Enrollment and Enrollment Period.

(1) Subject to the limitations in Sections R414-306-4 and R414-310-6, the effective date of PCN enrollment is the first day of the application month with the following exceptions:

(a) An applicant may be eligible for PCN if the applicant applies during an open enrollment period and will turn 19 before the end of the month in which open enrollment ends.

(i) Enrollment in PCN may not begin before an individual turns 19 years of age.

(ii) If an applicant qualifies for Medicaid or CHIP in the application month, enrollment in PCN begins the month after eligibility for Medicaid or CHIP ends.

(b) If the individual is moving from UPP, the effective date of enrollment is the first day after the health insurance coverage ends.

(c) If the individual is moving from Medicaid, or is eligible for Medicaid in the application month or the month following the application month, the effective date of enrollment is the first day of the month after Medicaid coverage ends. To enroll in PCN, Medicaid eligibility must end by the end of the month following the application month.

(2) The effective date of reenrollment for PCN after the eligibility agency completes the periodic review is the first day after either the review month or due process month. Subsection R414-310-11(5) defines the effective date of reenrollment when the enrollee completes the review process in the three calendar months after the case is closed for incomplete review.

(3) The eligibility agency shall end eligibility for any of the following reasons:

(a) the individual turns 65 years of age;

(b) the individual enrolls in a health coverage plan as defined in Subsection 414-310-6(2);

(c) the individual gains access to an employer-sponsored health plan that meets the requirements of Subsection R414-310-6(2);

(d) a change in income or household composition results in the individual exceeding the income limit;

(e) the individual dies;

(f) the individual moves out of state or cannot be located; or

(g) the individual enters a public institution or an Institution for Mental Disease.

(4) An enrollee who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program if the enrollee meets UPP eligibility requirements.

R414-310-13. Change Reporting and Benefit Changes.

(1) Enrollees are required to report changes defined in Subsection R414-310-3(2) to the eligibility agency.

(a) The eligibility agency shall determine the effect of the

change and make the appropriate change in the enrollee's eligibility.

(b) The eligibility agency shall send proper notice of changes in eligibility.

(2) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.

(3) If an enrollee requests enrollment for a spouse, the application date for the spouse is the date of the request.

(a) A new application form is not required.

(b) The eligibility of the spouse is determined according to Section R414-310-11.

(c) The eligibility agency shall determine the effective date of enrollment for the individual in accordance with Section R414-310-12.

(d) All other eligibility requirements must be met.

(4) If the eligibility agency requests verification of a reported change and the enrollee fails to return the verification by the due date, the eligibility agency shall end eligibility effective the end of the month in which the agency sends proper notice.

R414-310-14. Notice and Termination.

(1) The Department adopts and incorporates by reference 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, and 435.919, October 1, 2013 ed.

(2) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the review.

(3) The eligibility agency shall end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

R414-310-15. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that the individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under PCN for which the individual is not eligible must repay the Department for the cost of the benefits that the individual receives.

(3) An alien and the alien's sponsor are jointly liable for benefits that an individual receives for which the individual is not eligible.

(4) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee, or for the benefit of the enrollee during a period in which the enrollee is not eligible to receive the benefits.

KEY: Medicaid, primary care, demonstration

April 21, 2014

Notice of Continuation June 4, 2012

26-18-1

26-1-5

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.****R414-320-1. Authority and Purpose.**

(1) This rule is authorized by Sections 26-1-5 and 26-18-3 and allowed under Section 1115(a) of the Social Security Act.

(2) This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

R414-320-2. Definitions.

The definitions in Section 26-40-102 and Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Adult" means an individual who is 19 years of age or older.

(2) "Avenue H" means Utah's Health Marketplace where Utah employers and their employees can find information about available employer-sponsored health insurance plans, select a plan, and enroll online.

(3) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(4) "Children's Health Insurance Program" or (CHIP) means the program for medical benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

(6) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through the Utah Health Exchange.

(7) "Enrollee" means an individual who applies for and is found eligible for the UPP program, and is receiving UPP benefits.

(8) "Open enrollment" means a period during which the eligibility agency accepts applications for the UPP program.

(9) "Primary Care Network" or (PCN) means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(10) "Public Institution" means an institution that is the responsibility of a governmental unit or is under the administrative control of a governmental unit.

(11) "Review month" means the last month of the certification period for an enrollee during which the eligibility agency redetermines the enrollee's eligibility for a new certification period.

(12) "UPP Qualified Health Plan" means a health plan that meets all of the following requirements:

(a) Health plan coverage includes:

- (i) physician visits;
- (ii) hospital inpatient services;
- (iii) pharmacy services;
- (iv) well child visits; and
- (v) children's immunizations.

(b) Lifetime maximum benefits must be at least \$1,000,000.

(c) The deductible may not exceed \$2,500 per individual.

(d) The plan must pay at least 70% of an inpatient stay after the deductible.

(e) The employer contributes at least 50% of the cost of the employee's health insurance premium when the plan is offered directly through the employer. If the employer offers plans through the Utah Health Exchange, the employer must contribute at least 50% of the cost of the employee's health insurance premium for either the employer's default plan or the

plan the employee selects. If the plan is a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan, the employer does not have to contribute to the premium.

(f) The plan does not cover any abortion services; or the plan only covers abortion services in the case where the life of the mother would be endangered if the fetus were carried to term or in the case of rape or incest.

(13) "Utah's Premium Partnership for Health Insurance" or (UPP) means a medical assistance program that provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan, including employer-sponsored health plans available under Avenue H, or COBRA coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) The provisions of Section R414-301-4 apply to applicants and enrollees of the UPP program except that reportable changes for UPP applicants and enrollees are defined in Subsection R414-320-3(2).

(2) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of learning of the change. The eligibility agency shall notify the applicant at the time of application of the changes that the individual must report. Reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan or COBRA coverage;

(b) An enrollee changes health insurance plans;

(c) The amount of the premium that the enrollee pays for an employer-sponsored health insurance plan or COBRA coverage changes;

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System;

(e) An enrollee leaves the household or dies;

(f) An enrollee or the household moves out of state;

(g) Change of address of an enrollee or the household; or

(h) An enrollee enters a public institution or an institution for mental diseases.

(3) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-6 and R414-301-7.

(4) An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan or COBRA coverage to be eligible for benefits.

(5) An eligible child may choose to enroll in his parent's or guardian's employer-sponsored health insurance plan or COBRA coverage and receive UPP benefits, or may choose direct coverage through CHIP. A child under the age of 19 may enroll in an employer-sponsored health insurance plan offered by the child's employer or COBRA coverage and UPP, or may choose direct coverage through CHIP.

R414-320-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-3, R414-302-4, R414-302-7, and R414-302-8 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to adult applicants and enrollees of UPP.

(2) The provisions of Sections R382-10-6, R382-10-7, and R382-10-9 concerning U.S. citizenship, alien status, state residency and social security numbers apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen or national, or who does not meet the alien status requirements of Sections R414-302-3 or R382-10-6 is not eligible for any services or benefits under the UPP program.

(4) Health plans must meet the criteria of being an UPP qualified health plan.

(5) An individual must apply for the UPP program before he turns 65 years of age. Enrollment shall end effective the end of the month in which an individual turns 65 years of age.

(6) The eligibility agency only accepts applications during open enrollment periods. The eligibility agency may limit the number of individuals it enrolls.

(a) The eligibility agency may stop enrollment of new individuals at any time.

(b) The open enrollment period may be limited to:

(i) adults with children living in the home;

(ii) adults without children living in the home, or;

(iii) other groups designated in advance by the eligibility agency consistent with efficient administration of the program.

(c) The eligibility agency may not accept applications or maintain waiting lists during a period that it stops enrollment of new individuals.

(d) A child is not subject to the open enrollment requirement to enroll in UPP.

(7) Residents of public institutions are not eligible for UPP.

(a) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.

(b) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

(8) The eligibility agency may not require an applicant or enrollee for the UPP program to provide Duty of Support information. An adult whose eligibility for Medicaid has been denied or terminated for failure to cooperate with Duty of Support requirements may not enroll in the UPP program.

R414-320-5. Verification and Information Exchange.

(1) An applicant and enrollee must provide verification of eligibility factors as requested by the eligibility agency and in accordance with the provisions of Section R414-308-4.

(2) The Department shall enter into agreements with other government agencies as outlined in Section R414-301-3.

(3) The eligibility agency shall safeguard information about applicants and enrollees to comply with the provisions of Section R414-301-5.

R414-320-6. Creditable Health Coverage.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b), October 1, 2013 ed.

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, July 1, 2013 ed., is not eligible for enrollment.

(3) An applicant who is covered by COBRA coverage may be eligible for UPP enrollment.

(4) The following requirements apply to an individual who has access to but has not yet enrolled in employer-sponsored health insurance:

(a) If the individual's cost for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through Avenue H, is less than 5% of the countable MAGI-based income for the individual's household, the individual is not eligible for the UPP program.

(b) If the individual's cost for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through Avenue H, equals or exceeds 5% of the countable MAGI-based income for the individual's household, the individual may enroll in UPP.

(i) An eligible child may choose enrollment in either UPP or CHIP.

(ii) If the cost of coverage exceeds 15% for an adult, the individual may enroll in either UPP or PCN. To enroll in PCN, it must be an open enrollment period and the individual must

meet the PCN criteria.

(c) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible.

(d) The eligibility agency will include in the cost of coverage for the spouse or dependent child, the cost to enroll the employee if the employee must be enrolled to enroll the spouse or dependent child.

(5) An eligible individual who has access to or who is enrolled in a COBRA plan may choose to enroll in UPP and the COBRA plan if the individual's cost for the COBRA plan exceeds 5% of the countable MAGI-based income for the individual's household.

(6) An individual who could enroll in Medicare is not eligible for UPP enrollment, even if the individual must wait for a Medicare open enrollment period to apply.

(7) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for UPP enrollment.

(a) An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must apply for and take all necessary steps to enroll in the VA Health Care System.

(b) Eligibility for the UPP program ends once the individual's coverage in the VA Health Care System begins.

(8) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in UPP for 90 days from the date the coverage ends.

(a) The eligibility agency may not apply a 90-day waiting period in the following situations:

(i) The premium paid by the individual or family for coverage of the individual or family member exceeded 5% of the MAGI-based household income.

(ii) The cost of the premium paid and deductible that includes the individual for the family coverage health plan exceeds 9.5% of the MAGI-based household income.

(iii) An employer stopped offering coverage under an ESI.

(iv) Loss of coverage due to a change in employment or involuntary separation.

(v) The individual has special health care needs as defined by the Department.

(vi) Loss of coverage due to the death or divorce of an UPP individual.

(vii) Voluntary termination of COBRA.

(viii) Voluntary termination of Utah Comprehensive Health Insurance Pool coverage.

(ix) Voluntary termination of coverage for an adult child from the parent's or guardian's ESI plan.

(x) Voluntary termination of coverage by a spouse who does not live in the same household as the UPP applicant.

(xi) Voluntary termination of coverage for a child from a non-custodial parent's ESI plan.

(xii) The individual is voluntarily terminated from insurance that does not provide coverage in Utah;

(xiii) The individual is voluntarily terminated from a limited health insurance plan;

(xiv) A child is terminated from a parent's insurance because ORS reverses the forced enrollment requirement due to the insurance being unaffordable.

(b) The eligibility agency will determine the individual's eligibility at the end of the waiting period without requiring a new application.

(i) The agency may request information about changes in the individual's circumstances that may affect eligibility.

(ii) If eligible, enrollment in UPP can begin in the month in which the 90-day ineligibility period ends.

(9) An individual is eligible to enroll in UPP if the individual's prior health insurance coverage expires before the

end of the calendar month that follows the month in which he applies for UPP, and the individual has access to another employer-sponsored health insurance plan that meets the criteria of an UPP qualified health plan. The UPP enrollment date must be after the prior health insurance coverage ends.

(10) An eligible individual with access to an employer-sponsored health plan who also has creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

R414-320-7. Household Composition and Income Provisions.

(1) The Department determines household composition and countable household income according to the provisions in R414-304-5.

(2) For an individual to be eligible to enroll, countable MAGI-based income for the individual's household must be equal to or less than 200% of the federal poverty guideline for the applicable household size.

R414-320-8. Budgeting.

(1) The Department shall apply the MAGI-based budgeting methodology defined at 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2013 ed., which it adopts and incorporates by reference.

(2) The eligibility agency determines an individual's eligibility prospectively for the upcoming certification period at the time of application and at each review for continuing eligibility.

(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period.

(b) The eligibility agency shall include in the best estimate, reasonably predictable income expected to be received during the review period, such as seasonal income, contract income, income received at irregular intervals, or income received less often than monthly. The income will be prorated over the review period to determine an average monthly income.

(3) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the best estimate. The best estimate may be a monthly amount that the household expects to receive each month of the certification period, or an annual amount that is prorated over the certification period. The eligibility agency may use different methods for different types of income that a household receives.

(4) The eligibility agency determines farm and self-employment income by using the individual's most recent tax return forms or other verification the individual can provide. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from the most recent period that the individual had farm or self-employment income. The eligibility agency shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses to determine net self-employment income, if those expenses are expected to occur in the future.

R414-320-9. Assets.

An asset test is not required for UPP eligibility.

R414-320-10. Application and Signature.

(1) The provisions of Section R414-308-3 apply to applicants of the UPP program, except for paragraph (9), (10) and the three months of retroactive coverage.

(2) The eligibility agency shall reinstate an UPP case without requiring a new application if the case closes in error.

(3) An applicant may withdraw an application any time

before the eligibility agency completes an eligibility decision on the application.

R414-320-11. Eligibility Decisions and Eligibility Reviews.

(1) The Department adopts and incorporates by reference 42 CFR 435.911 and 435.912, October 1, 2013 ed., regarding eligibility determinations.

(2) At application and review, the eligibility agency shall determine whether the individual applying for UPP enrollment is eligible for Medicaid.

(a) An individual who qualifies for Medicaid without paying a spenddown or an MWI premium cannot enroll in the UPP program.

(b) An individual who must pay a spenddown or MWI premium to receive Medicaid may enroll in UPP if the individual elects not to receive Medicaid.

(3) An individual who is open for Medicaid, PCN or CHIP may request to enroll in the UPP program.

(a) A new application form is not required.

(b) The rules in Section R414-320-12 govern the effective date of enrollment.

(c) A new income test must be completed for the individual. If the individual's income places the UPP household over the income limit for UPP, the individual is not eligible to enroll in UPP.

(d) If the individual is moving from PCN or CHIP, the eligibility agency shall waive the open enrollment requirement if there is no break in coverage.

(e) If the individual was previously on UPP, became eligible for Medicaid, and requests to reenroll in UPP without a break in coverage, the eligibility agency shall waive the open enrollment period and the requirement in Subsection 414-320-6(2).

(f) If the individual is moving from Medicaid and was not previously on UPP, or there has been a break in coverage of one or more months, an adult individual must reapply during an open enrollment period.

(g) For a PCN or CHIP individual who enrolls in an employer-sponsored health plan, the eligibility agency shall waive the requirement found in Subsection 414-320-6(2) if the change is reported within ten calendar days of signing up for coverage or within ten calendar days after coverage begins, whichever is later.

(h) All other eligibility requirements must be met.

(4) The eligibility agency shall process each application to a decision unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant dies;

(c) the applicant cannot be located; or

(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if that date is later.

(5) The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916.

(a) The agency may request a recipient to contact the agency to complete the eligibility review.

(b) The agency shall provide the recipient a written request for verification needed to complete the review.

(c) The agency shall provide proper notice of an adverse decision.

(d) If the agency cannot provide proper notice of an adverse decision, the agency extends eligibility to the following month to allow for proper notice.

(6) If a recipient fails to respond to a request to complete the review or fails to provide all requested verification to complete the review, the eligibility agency shall end eligibility

effective the end of the month for which the agency sends proper notice to the recipient.

(a) If the recipient contacts the agency to complete the review or returns all requested verification within three calendar months of the closure date, the eligibility agency shall treat such contact or receipt of verification as a new application. The agency may not require a new application form.

(b) The application processing period applies to this request to reapply.

(c) Eligibility can begin in the month the client contacts the agency to complete the review if all verification is received within the application processing period.

(d) If the recipient fails to return the verification timely, but before the end of the three calendar months, eligibility becomes effective the first day of the month in which all verification is provided and the individual is found eligible.

(e) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(f) During these three calendar months, the eligibility agency shall waive the open enrollment period requirement and the requirement at Subsection R414-320-6(2).

(g) If the enrollee does not respond to the request to complete a review for UPP during the three calendar months immediately following the review closure date, the enrollee must reapply for UPP and meet all eligibility criteria.

(7) If the individual files a new application or makes a request to reenroll within the calendar month that follows the effective closure date, when the closure is for a reason other than an incomplete review, the eligibility agency will process the request as a new application and waive the open enrollment period and the requirement found at Subsection R414-320-6(2).

(8) The enrollee must reapply if the case closes for one or more calendar months for any reason other than an incomplete review.

(9) The eligibility agency shall comply with the requirements of 42 CFR 435.1200(e), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-320-12. Effective Date of Enrollment and Enrollment Period.

(1) Subject to Section R414-320-6, and the limitations in Section R414-306-4, the effective date of enrollment in the UPP program is the first day of the application month.

(a) The effective date of enrollment for a newborn or adopted child is the date of birth or the date of adoption, if the request is made within 30 days of the date of birth or adoption.

(b) If the request to add a newborn or adopted child is made after 30 days of the date of birth or the date of adoption, enrollment is effective on the first day of the month in which the date of request occurs.

(2) An individual who is approved for the UPP program must enroll in the employer-sponsored health plan or COBRA within 30 days of receiving an approval notice from the eligibility agency.

(3) If the applicant does not enroll in the employer-sponsored health insurance plan or COBRA within 30 days of the date that the eligibility agency sends the UPP approval notice, the eligibility agency shall deny the application.

(4) The Department may not reimburse the enrollee for premiums before the effective date of enrollment and not before the month in which the enrollee pays a health insurance or COBRA premium. The enrollee must verify the premium payment.

(5) The effective date of enrollment for an individual moving directly from Medicaid, PCN, or CHIP is the first day of the month after eligibility for Medicaid, PCN, or CHIP ends.

(6) The effective date of reenrollment in UPP after the eligibility agency completes the periodic review, is the first day

of the month after the review month, or the first day after the due process month. Subsection R414-320-11(5) defines the effective date of reenrollment when the enrollee completes the review process in the three calendar months after the case is closed for incomplete review.

(7) An individual who becomes eligible for UPP is enrolled for a 12-month certification period that begins with the first month of eligibility.

(8) The eligibility agency shall end eligibility before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns 65 years of age;

(b) An enrolled child turns 19 years of age and was covered by the parent's or guardian's health insurance plan;

(c) The individual becomes entitled to receive Medicare;

(d) The individual becomes covered by VA Health Insurance, or fails to apply for VA health system coverage when potentially eligible;

(e) The individual dies;

(f) The individual moves out of state or cannot be located;

or

(g) The individual enters a public institution or an Institution for Mental Disease.

(9) The eligibility agency shall end eligibility if an adult enrollee discontinues enrollment in employer-sponsored insurance or COBRA. The enrollee may switch to the PCN program if the enrollee meets PCN eligibility requirements.

R414-320-13. Change Reporting and Benefit Changes.

(1) Enrollees are required to report changes to the eligibility agency as defined in Subsection R414-320-3(2).

(a) The eligibility agency shall determine the effect of the change and make the appropriate change in the enrollee's eligibility.

(b) The eligibility agency shall send proper notice of changes in eligibility.

(2) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.

(3) An eligible household may request enrollment for an individual not enrolled in UPP; the application date for the individual is the date of the request.

(a) A new application form is not required.

(b) The eligibility agency determines the individual's eligibility for UPP in accordance with Section R414-320-11.

(c) The eligibility agency shall determine the effective date of enrollment for individuals in accordance with Section R414-320-12.

(d) The eligibility agency shall waive the requirement found in Subsection R414-320-6(2) if the individual is a newborn or adopted child, and the request to add the child is made within 30 days of the date of birth or adoption.

(e) A new income test must be completed for the individual. If the individual's income places the UPP household over the income limit for UPP, the individual is not eligible to enroll in UPP.

(f) All other eligibility requirements must be met.

(4) An enrollee may request a Medicaid determination of eligibility when there is a change of income during the certification period.

(a) The eligibility agency shall end UPP enrollment and change the enrollee's coverage to Medicaid if the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid without cost.

(b) If the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid with a spenddown or MWI premium, the enrollee may choose to remain on UPP.

R414-320-14. Notice and Termination.

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(2) The eligibility agency shall end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(3) The eligibility agency shall end an individual's enrollment if the individual fails to complete the periodic review process on time.

(4) The eligibility agency shall notify an enrollee in writing at least ten days before the effective date of an action adversely affecting the enrollee's eligibility. The notice must include:

- (a) the action to be taken;
- (b) the reason for the action;
- (c) the regulations or policy that support an adverse action;
- (d) the applicant's or enrollee's right to a hearing;
- (e) how an applicant or enrollee may request a hearing;

and

(f) the applicant or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(5) The eligibility agency need not give ten-day notice of termination if:

- (a) the enrollee is deceased;
- (b) the enrollee moves out-of-state and is not expected to return; or
- (c) the enrollee enters a public institution or institution for mental disease.

R414-320-15. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that an individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under the UPP program for which the individual is not eligible must repay the Department for the cost of the benefits that he receives.

(3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a period that the enrollee is not eligible to receive the benefits.

R414-320-16. Benefits.

(1) The UPP program shall provide cash reimbursement to enrollees.

(2) The reimbursement may not exceed the amount that the enrollee pays toward the cost of the employer-sponsored health plan, employer-sponsored plans selected through UHE, or COBRA continuation coverage.

(3) The UPP program may reimburse an adult up to \$150 each month.

(4) The UPP program may reimburse a child up to \$120 each month for medical coverage. The UPP program will pay the child an additional \$20 if the child elects to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, a child may receive cash reimbursement up to \$120 for the medical insurance cost and may receive dental-only benefits through CHIP.

(b) When the employer also offers employer-sponsored

dental coverage, the applicant may choose to enroll a child in the employer-sponsored dental coverage, in which case, the UPP program will pay the child an additional \$20. The enrollee may also choose to only enroll the child in the employer-sponsored health insurance and UPP, and not enroll the child in the employer-sponsored dental coverage, in which case the child may receive dental-only benefits through CHIP.

KEY: CHIP, Medicaid, PCN, UPP

April 21, 2014

Notice of Continuation October 13, 2011

26-18-3

26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-401. Nursing Care Facility Assessment.****R414-401-1. Introduction and Authority.**

(1) This rule implements the assessment imposed on certain nursing care facilities by Utah Code Title 26, Chapter 35a.

(2) The rule is authorized by Section 26-1-30 and Utah Code Title 26, Chapter 35a.

R414-401-2. Definitions.

(1) The definitions in Section 26-35a-103 apply to this rule.

(2) The definitions in R414-1 apply to this rule.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is \$14.57 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of \$6.50 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities effective January 1, 2006. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

R414-401-4. Reporting and Auditing Requirements.

(1) Each nursing care facility shall, on or before the end of the succeeding month, file with the Department a report for the month, and shall remit with the report the assessment required to be paid for the month covered by the report.

(2) Each report shall be on the Department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify that the information is accurate to the best of the representative's knowledge.

(4) Each nursing care facility subject to this assessment shall maintain complete and accurate records. The Department may inspect each nursing care facility's records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity may combine reports and payments of assessments provided that the required data are clearly set forth for each separately reporting nursing care facility.

(6) The Department shall extend the time for making required reports to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

(7) Providers may update previously submitted patient day assessment reports for 90 days following the original submission date.

R414-401-5. Penalties and Interest.

(1) The penalties for failure to file a report, to pay the assessment due within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment are provided in Section 26-35a-105. The Department shall suspend all Medicaid payments to a nursing facility until the facility pays the assessment due in full or until the facility and the Department reach a negotiated settlement.

(2) The Department shall charge a nursing facility a negligence penalty as prescribed in Subsection 26-35a-105(3)(a) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment.

(3) The Department shall charge a nursing facility an intentional disregard penalty as prescribed in Subsection 26-35-105(3)(b) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment two times within a 12-month period, or if the facility does not pay in full (or file its report) within 60 days of a notice of deficiency of the assessment.

(4) The Department shall charge a nursing facility an intent to evade penalty as prescribed in Subsection 26-35a-105(4) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment three times with a 12-month period, or if the facility does not pay in full (or file its report) within 75 days of a notice of deficiency of the assessment.

KEY: Medicaid, nursing facility

July 1, 2013

Notice of Continuation April 7, 2014

26-1-30

26-35a

26-18-3

R430. Health, Family Health and Preparedness, Child Care Licensing.**R430-8. Exemptions From Child Care Licensing.****R430-8-1. Legal Authority.****R430-8-2. Purpose.**

This rule defines what constitutes child care that is exempt from regulation by the Utah Department of Health, Bureau of Child Care Licensing.

R430-8-3. Definitions.

(1) "Parochial education institution" means an institution that meets all of the following criteria:

(a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;

(b) has a governing board that actively supervises and directs the educational curriculum used by the institution and exercises oversight over the health and safety of the children in the program;

(c) is owned and operated by a religious institution that is registered with the federal government as 501(c)(3) religious organization;

(d) is not directly funded at public expense;

(e) does not receive:

(i) child care subsidy funds, directly or indirectly, from the Department of Workforce Services; or

(ii) child care food program funds, directly or indirectly, from the State Office of Education; and

(f) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.

(2) "Private education institution" means an institution that meets all of the following criteria:

(a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;

(b) has a governing board that actively supervises and directs the educational curriculum used by the institution, and exercises oversight over the health and safety of the children in the program;

(c) is not directly funded at public expense;

(d) does not receive:

(i) child care subsidy funds, directly or indirectly, from the Department of Workforce Services; or

(ii) child care food program funds, directly or indirectly, from the State Office of Education; and

(e) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.

(3) "Public school" means a school, including a charter school, that is directly funded at public expense and is regulated by a board of education governed by Title 53A, Chapter 3, Local School Boards.

(4) "Related children" means children for whom the child care provider is the:

(a) parent, legal guardian, or step-parent;

(b) grandparent, step-grandparent, or great-grandparent;

(c) sibling or step-sibling; or

(d) aunt, uncle, step-aunt, step-uncle, great-aunt, or great-uncle.

R430-8-4. Care Not in Lieu of Parental Care.

(1) A license is not required for care that meets all of the following:

(a) the parent is physically present in the building where the care is provided, at all times while the care is being provided, and is near enough to reach his or her child to provide care within five minutes if needed;

(b) the duration of the care is less than four hours for any individual child in any one day;

(c) the program does not diaper children; and

(d) the program does not prepare or serve meals to children.

R430-8-5. Care Under Other Government Oversight.

(1) A license is not required for care provided at a facility that is owned or operated by the federal government.

(2) A license is not required for care provided by a program that is owned or operated by the federal government.

(3) A license is not required for care provided as part of a summer camp that operates on federal land pursuant to a federal permit.

(4) A license is not required for care provided by an organization that qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code, if:

(a) the care is provided pursuant to a written agreement with a local municipality or a county;

(b) the local municipality or county provides oversight of the program; and

(c) all of the children in care are over age four.

(5) A license is not required for care provided at a residential support program that is licensed by the Department of Human Services.

R430-8-6. Mental Health Counseling.

A license is not required for group counseling of children provided by a mental health therapist who is licensed to practice in this state, as defined in Utah Code 58-60-102.

R430-8-7. Relative Care.

The Department does not issue licenses or certificates to persons who only care for related children.

R430-8-8. Care in the Home of the Provider.

(1) A license or certificate is not required for care provided in the home of the provider for less than four hours per day, or for fewer than five children in the home at one time.

(2) The Department does not issue licenses or certificates for care provided in the home of the provider on a sporadic basis only.

R430-8-9. Care Provided by an Educational Institution.

(1) A license is not required for care provided by or at a public school or as part of a course of study at a public school.

(2) A license is not required for care provided at a public or private institution of higher education if the care is provided in connection with a course of study at the institution of higher education.

(3) A license is not required for:

(a) care provided as part of a course of study at a private education institution; or

(b) care provided as part of a program administered by a private education institution.

(4) A license is not required for care provided by a parochial education institution.

R430-8-10. Care for Less Than Three Days a Week.

(1) A license or certificate is not required if the provider offers care on no more than two days during any calendar week. A calendar week means from Sunday through Saturday.

R430-8-11. Voluntary Licensure.

(1) A child care provider defined as exempt under this rule may voluntarily receive a license and agree to be subject to all of the terms and conditions of the license, except for the following:

(a) relative care under section R430-8-7 above; and

(b) care provided in the home of the provider on a sporadic basis only under subsection R430-8-8(2) above.

KEY: child care facilities

January 1, 2010

Notice of Continuation April 25, 2014

26-39

**R432. Health, Family Health and Preparedness, Licensing.
R432-14. Birthing Center Construction Rule.**

R432-14-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-14-2. Purpose.

This rule provides construction and physical plant standards for birthing centers.

R432-14-3. General Design Requirements.

(1) Birthing centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of section 5.2 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition (Guidelines) and are adopted and incorporated by reference.

(2) Birthing Centers shall consist of at least two, but not more than five birthing rooms.

(3) Birthing rooms and ancillary service areas shall be organized in a contiguous physical arrangement.

(4) Birthing Centers shall comply with NFPA 101, Life Safety Code, Chapter 20, New Ambulatory Health Care Occupancies.

(5) A Birthing Center located contiguous with a general hospital may share radiology services, laboratory services, pharmacy services, engineering services, maintenance services, laundry services, housekeeping services, dietary services, and business functions. The owner shall retain in the Birthing Center a written agreement for the shared services.

R432-14-4. General Construction Patient Facilities.

(1) Requirements of section 5.2 of the Guidelines shall be met except as modified in this section.

(2) When a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(3) The facility shall be designed to allow access to service areas and common areas without compromising patient privacy.

(4) Patient rooms and service areas shall be grouped to form a physically defined service unit.

(5) Spaces shall be provided for each of the required services.

(6) Interior finishes, lighting, and furnishings shall reflect a residential rather than an institutional setting.

(7) Maximum room occupancy shall be one mother and her newborn infant or infants.

(8) Each birthing room shall have a window in accordance with R432-4-23(5). Windows with a sight line which permits observation from the exterior shall be arranged or draped to ensure patient privacy.

(9) Patient rooms shall provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 24 inches by 20 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

(10) A toilet room with direct access from the birthing room shall be accessible to each birthing room.

(a) The toilet room shall contain a toilet, a lavatory, and a shower or tub.

(b) A toilet room may serve two patient rooms.

(c) All toilet room fixtures shall be handicapped accessible and shall have grab bars in compliance with ADA/ABA-AG.

(11) Newborn infant resuscitation facilities, remote from facilities serving the mother, including electrical receptacles, oxygen, and suction shall be immediately available to each birthing room in addition to resuscitation equipment provided for the mother. Portable oxygen and suction equipment shall be permitted.

(12) A separate room for storage of maintenance materials and equipment shall be provided.

(a) The room may serve as a maintenance office with storage for maintenance files, facility drawings, and operation

manuals.

(b) The storage room shall be in addition to the required environmental services room.

(13) Special surgical lighting is not required.

(14) An examination light shall be provided in each patient room. The light, if portable, shall be immediately accessible.

(15) An emergency electrical system connected to an on-site emergency generator is required.

(a) Services shall be connected to the emergency generator to include:

(i) fire alarm system;

(ii) telephone;

(iii) nurse call;

(iv) one duplex receptacle in each patient room located to allow use of a portable examination light;

(v) one duplex receptacle at each nurse station;

(vi) heating system;

(vii) emergency lighting system.

(b) There shall be sufficient fuel storage capacity to permit at least four hours continuous operation.

R432-14-5. Sections of the Guidelines which are Excluded.

The following sections of the Guidelines do not apply:

(1) Location, Subsection 5.2-1.3.1.1

(2) Ventilation of Health Care Facilities, Part 6.

R432-14-6. Penalties.

The Department may assess a civil money penalty of up to \$10,000 and deny approval for patient utilization of new or remodeled areas denied if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health care facilities

February 21, 2012

Notice of Continuation April 10, 2014

26-21-5

26-21-16

R432. Health, Family Health and Preparedness, Licensing.**R432-270. Assisted Living Facilities.****R432-270-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-270-2. Purpose.

This rule establishes the licensing and operational standards for assisted living facilities Type I and Type II. Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet the care needs in a safe manner.

R432-270-3. Definitions.

- (1) The terms used in these rules are defined in R432-1-3.
- (2) In addition:
 - (a) "Assessment" means documentation of each resident's ability or current condition in the following areas:
 - (i) memory and daily decision making ability;
 - (ii) ability to communicate effectively with others;
 - (iii) physical functioning and ability to perform activities of daily living;
 - (iv) continence;
 - (v) mood and behavior patterns;
 - (vi) weight loss;
 - (vii) medication use and the ability to self-medicate;
 - (viii) special treatments and procedures;
 - (ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;
 - (x) leisure patterns and interests;
 - (xi) assistive devices; and
 - (xii) prosthetics.
 - (b) "Activities of daily living (ADL)" are the following:
 - (i) personal grooming, including oral hygiene and denture care;
 - (ii) dressing;
 - (iii) bathing;
 - (iv) toileting and toilet hygiene;
 - (v) eating during mealtime;
 - (vi) self administration of medication; and
 - (vii) independent transferring, ambulation and mobility.
 - (c) "Dependent" means a person who meets one or all of the following criteria:
 - (i) requires inpatient hospital or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins;
 - (ii) is unable to evacuate from the facility without the physical assistance of two persons.
 - (d) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.
 - (e) "Hospice patient" means an individual who is admitted to a hospice program or agency.
 - (f) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.
 - (g) "Self-direct medication administration" means the resident can:
 - (i) recognize medications offered by color or shape; and
 - (ii) question differences in the usual routine of medications.
 - (h) "Semi-independent" means a person who is:
 - (i) physically disabled but able to direct his own care; or
 - (ii) cognitively impaired or physically disabled but able to evacuate from the facility or to a zone or area of safety with

limited physical assistance of one person.

(i) "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.

(j) "Services" means activities which help the residents develop skills to increase or maintain their level of psychosocial and physical functioning, or which assist them in activities of daily living.

(k) "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.

(l) "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).

(m) "Social care" means:

(i) providing opportunities for social interaction in the facility or in the community; or

(ii) providing services to promote independence or a sense of self-direction.

(n) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensing.

(1) A person that offers or provides care to two or more unrelated individuals in a residential facility must be minimally licensed as an assisted living facility if:

(a) the individuals stay in the facility for more than 24 hours; and

(b) the facility provides or arranges for the provision of assistance with one or more activity of daily living for any of the individuals.

(2) An assisted living facility may be licensed as a Type I facility if:

(a) the individuals under care are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(3) An assisted living facility must be licensed as a Type II facility if the individuals under care are capable of achieving mobility sufficient to exit the facility only with the limited assistance of one person.

(4) A Type I assisted living facility shall provide social care to the individuals under care.

(5) A Type II assisted living facility shall provide care in a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who need any of these services as required by department rule.

(6) Type I and II assisted living facilities must provide each resident with a separate living unit. Two residents may share a unit upon written request of both residents.

(7) An individual may continue to remain in an assisted living facility provided:

(a) the facility construction can meet the individual's needs;

(b) the individual's physical and mental needs are appropriate to the assisted living criteria; and

(c) the facility provides adequate staffing to meet the individual's needs.

(8) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local

laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) successfully complete the criminal background screening process defined in R432-35; and

(e) for all Type II facilities, complete a Department approved national certification program within six months of hire.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and

administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-305, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person within 24 hours of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(3) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) All personnel must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

- (a) job description;
- (b) ethics, confidentiality, and residents' rights;
- (c) fire and disaster plan;
- (d) policy and procedures; and
- (e) reporting responsibility for abuse, neglect and exploitation.

(9) Each employee shall receive documented in-service training. The training shall be tailored to include all of the following subjects that are relevant to the employee's job responsibilities:

- (a) principles of good nutrition, menu planning, food preparation, and storage;
- (b) principles of good housekeeping and sanitation;
- (c) principles of providing personal and social care;
- (d) proper procedures in assisting residents with medications;
- (e) recognizing early signs of illness and determining when there is a need for professional help;
- (f) accident prevention, including safe bath and shower water temperatures;
- (g) communication skills which enhance resident dignity;
- (h) first aid;
- (i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and
- (j) special needs of the Dementia/Alzheimer's resident.

(10) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(11) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(12) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

- (i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and
 - (ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.
- (b) The facility shall develop employee health screening and immunization components of the personnel health program.
- (c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

- (A) initial hiring;
 - (B) suspected exposure to a person with active tuberculosis; and
 - (C) development of symptoms of tuberculosis.
- (ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(e) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-9. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

- (a) a description of the manner of protecting personal

funds, in accordance with Section R432-270-20; and

(b) a statement that the resident may file a complaint with the state long term care ombudsman and any other advocacy group concerning resident abuse, neglect, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both inside and outside the facility;

(l) the right to send and receive mail unopened;

(m) the right to have access to telephones to make and receive private calls;

(n) the right to arrange for medical and personal care;

(o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;

(p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. Assisted living Type II residents who have been assessed to require a secure environment may be housed in a secure unit, provided the secure unit is approved by the fire authority having jurisdiction. This right does not prohibit the establishment of house rules such as locking doors at night for the protection of residents;

(q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a

citizen;

(s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility, as provided in R432-270-20 concerning management of resident funds;

(t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;

(u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;

(v) the right to personal privacy and confidentiality of personal and clinical records;

(w) the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:

(i) medical condition;

(ii) the right to refuse treatment;

(iii) the right to formulate an advance directive in accordance with UCA Section 75-2a; and

(iv) the right to refuse to participate in experimental research.

(6) The following items must be posted in a public area of the facility that is easily accessible by residents:

(a) the long term care ombudsmen's notification poster;

(b) information on Utah protection and advocacy systems; and

(c) a copy of the resident's rights.

(7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.

(8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.

(a) The facility shall provide private space for resident groups or family groups.

(b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.

(c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-10. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) The facility shall accept and retain only residents who meet the following criteria:

(a) Residents admitted to a Type I facility shall meet the following criteria before being admitted:

(i) be ambulatory or mobile and be capable of taking life saving action in an emergency;

(ii) have stable health;

(iii) require no assistance or only limited assistance in the

activities of daily living; and

(iv) require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.

(b) Residents admitted to a Type II facility may be independent and semi-independent, but shall not be dependent.

(5) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others; or

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital or long-term nursing care.

(6) A Type I facility may accept or retain residents who:

(a) do not require significant assistance during night sleeping hours;

(b) are able to take life saving action in an emergency without the assistance of another person; and

(c) do not require significant assistance from staff or others with more than two ADL's.

(7) A Type II facility may accept or retain residents who require significant assistance from staff or others in more than two ADL's, provided the staffing level and coordinated supportive health and social services meet the needs of the resident.

(8) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) the death of a resident.

(9) A type I assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) a facility may retain hospice patient residents who are not capable to exit the facility without assistance upon the following conditions:

(i) the facility must assure that a worker or an individual is assigned solely to each specific hospice patient is on-site to assist the resident in emergency evacuation 24 hours a day, seven days a week;

(ii) the facility must train the assigned worker or individual to specifically assist in the emergency evacuation of the assigned hospice patient resident;

(iii) the worker or individual must be physically capable

of providing emergency evacuation assistance to the particular hospice patient resident; and

(iv) hospice residents who are not capable to exit the facility without assistance comprise no more than 25 percent of the facility's resident census.

(10) A type II assisted living facility may accept and retain hospice patient residents under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) if a resident becomes dependent while on hospice care and the facility wants to retain the resident in the facility, the facility must:

(i) develop an emergency plan to evacuate the hospice resident in the event of an emergency; and

(ii) integrate the emergency plan into the resident's service plan.

R432-270-11. Transfer or Discharge Requirements.

(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs because the resident poses a threat to health or safety to self or others, or the facility is not able to provide required medical treatment.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases to operate.

(2) Prior to transferring or discharging a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.

(a) The notice shall be either hand-delivered or sent by certified mail.

(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge shall:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established

under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The facility shall provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-270-12. Resident Assessment.

(1) A signed and dated resident assessment shall be completed on each resident prior to admission and at least every six months thereafter.

(2) In Type I and Type II facilities, the initial and six-month resident assessment must be completed and signed by a licensed health care professional.

(3) The resident assessment must include a statement signed by the licensed health care professional completing the resident assessment that the resident meets the admission and level of assistance criteria for the facility.

(4) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(5) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition and update the resident's service plan to reflect the change in condition.

R432-270-13. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan must be prepared by the administrator or a designated facility service coordinator.

(4) The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-14. Service Coordinator.

(1) If the administrator appoints a service coordinator, the service coordinator must have knowledge, skills and abilities to coordinate the service plan for each resident.

(2) The duties and responsibilities of the service coordinator must be defined by facility policy and included in the designee's job description.

(3) The service coordinator is responsible to document that the resident or resident's designated responsible person is encouraged to actively participate in developing the service plan.

(4) The administrator and designated service coordinator are responsible to ensure that each resident's service plan is implemented by facility staff.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(2) A Type I assisted living facility must employ or contract with a registered nurse to provide or delegate medication administration for any resident who is unable to self-medicate or self-direct medication management.

(3) A Type II assisted living facility must employ or contract with a registered nurse to provide or supervise nursing services to include:

- (a) a nursing assessment on each resident;
- (b) general health monitoring on each resident; and
- (c) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31B-701.

(4) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(3)(a) through (c).

(5) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services. To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

(6) At least one certified nurse aide must be on duty in a Type II facility 24 hours per day.

R432-270-16. Secure Units.

(1) A Type II assisted living facility with approved secure units may admit residents with a diagnosis of Alzheimer's/dementia if the resident is able to exit the facility with limited assistance from one person.

(2) Each resident admitted to a secure unit must have an admission agreement that indicates placement in the secure unit.

(a) The secure unit admission agreement must document that a wander risk management agreement has been negotiated with the resident or resident's responsible person.

(b) The secure unit admission agreement must identify discharge criteria that would initiate a transfer of the resident to a higher level of care than the assisted living facility is able to provide.

(3) There shall be at least one staff with documented training in Alzheimer's/dementia care in the secure unit at all times.

(4) Each secure unit must have an emergency evacuation plan that addresses the ability of the secure unit staff to evacuate the residents in case of emergency.

R432-270-17. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

- (a) notifying the resident's responsible person;
- (b) arranging for transportation to and from the

practitioner's office; or

(c) arrange for a home visit by a health care professional.

(3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-18. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

- (a) socialization activities;
- (b) independent living activities to foster and maintain independent functioning;
- (c) physical activities; and
- (d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

(a) coordinate all recreational activities, including volunteer and auxiliary activities;

(b) plan, organize, and conduct the residents' activity program with resident participation; and

(c) develop and post monthly activity calendars, including information on community activities, based on residents' needs and interests.

(4) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(5) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (d) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications

only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the prescribing order.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

- (a) the resident's name;
- (b) the name of the prescribing practitioner;
- (c) medication name including prescribed dosage;
- (d) the time, dose and dates administered;
- (e) the method of administration;
- (f) signatures of personnel administering the medication;

and

(g) the review date.

(5) The licensed health care professional or licensed pharmacist should document any change in the dosage or schedule of medication in the medication record. When changes in the medication are documented by the facility staff the licensed health care professional must co-sign within 72 hours. The licensed health care professional must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) Each resident's medication record must contain a list of possible reactions and precautions for prescribed medications.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed when a medication error occurs or is identified.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications shall be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, the resident shall have timely access to the medication.

(b) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(c) The facility must develop and implement policies for the security and disposal of narcotics. Any disposal of controlled substances by a licensee or facility staff shall be consistent with the provisions of 21 CFR 1307.21.

(11) The facility shall develop and implement a policy for disposing of unused, outdated, or recalled medications.

(a) The facility shall return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) The administrator shall document the return to the resident or the resident's responsible person of medication stored in a central storage.

R432-270-20. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal

funds or valuables deposited with the facility, in accordance with the following:

(a) The licensee shall establish and maintain on the residents' behalf a system that assures a full, complete, and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of \$150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

(ii) In pooled accounts, there shall be a separate accounting for each resident's share, including interest.

(e) The facility shall maintain a resident's personal funds that do not exceed \$150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-21. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

- (a) employee application;
- (b) date of employment;
- (c) termination date;
- (d) reason for leaving;

- (e) documentation of CPR and first aid training;
 - (f) health inventory;
 - (g) food handlers permits;
 - (h) TB skin test documentation; and
 - (i) documentation of criminal background screening.
- (4) The facility must maintain in the facility a separate record for each resident that includes the following:
- (a) the resident's name, date of birth, and last address;
 - (b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;
 - (c) the name, address, and telephone number of the individual to be notified in case of accident or death;
 - (d) the name, address, and telephone number of a physician and dentist to be called in an emergency;
 - (e) the admission agreement;
 - (f) the resident assessment; and
 - (g) the resident service plan.
- (5) Resident records must be retained for at least three years following discharge.

R432-270-22. Food Services.

- (1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.
- (a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.
- (b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.
- (c) The facility food service must comply with the following:
- (i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.
 - (ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.
 - (iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.
- (2) The facility shall provide adaptive eating equipment and utensils for residents as needed.
- (3) A different menu shall be planned and followed for each day of the week.
- (a) All menus must be approved and signed by a certified dietitian.
 - (b) Cycle menus shall cover a minimum of three weeks.
 - (c) The current week's menu shall be posted for residents' viewing.
 - (d) Substitutions to the menu that are actually served to the residents shall be recorded and retained for three months for review by the Department.
- (4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.
- (5) Residents shall be encouraged to eat their meals in the dining room with other residents.
- (6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.
- (7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.
- (8) The facility shall employ food service personnel to meet the needs of residents.
- (a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

- (b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

(10) If food service personnel also work in housekeeping or provide direct resident care, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary food service.

R432-270-23. Housekeeping Services.

- (1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.
- (2) The facility shall designate a person to direct housekeeping services. This person shall:
- (a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.
 - (b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.
- (3) The facility shall control odors by maintaining cleanliness.
- (4) There shall be a trash container in every occupied room.
- (5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.
- (6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.
- (7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.
- (8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-24. Laundry Services.

- (1) The facility shall provide laundry services to meet the needs of the residents, including sufficient linen supply to permit a change in bed linens for the total number of licensed beds, plus an additional fifty percent of the licensed bed capacity.
- (2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.
- (3) Food may not be stored, prepared, or served in any laundry area.
- (4) The facility shall make available for resident use, the following:
- (a) at least one washing machine and one clothes dryer; and
 - (b) at least one iron and ironing board.

R432-270-25. Maintenance Services.

- (1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, in good repair and in compliance with R432-6.
- (a) Fire rated construction and assemblies must be maintained in accordance with R710-3, Assisted Living Facilities.
 - (b) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.
 - (c) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning.
 - (d) Air filters installed in heating, ventilation and air conditioning systems must be inspected, cleaned or replaced in accordance with manufacturer specifications.

(2) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) The facility shall document maintenance work performed.

(4) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees Fahrenheit.

R432-270-26. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The facility shall have, and be capable of implementing, contingency plans regarding excessively high

ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-27. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-28. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-29. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(5) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(6) The facility must complete a service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care. Policies and procedures must be available to staff regarding the respite care clients which include:

- (a) medication administration;
 - (b) notification of a responsible party in the case of an emergency;
 - (c) service agreement and admission criteria;
 - (d) behavior management interventions;
 - (e) philosophy of respite services;
 - (f) post-service summary;
 - (g) training and in-service requirement for employees; and
 - (h) handling personal funds.
- (8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.
- (9) The facility shall maintain a record for each person receiving respite services which includes:
- (a) a service agreement;
 - (b) demographic information and resident identification data;
 - (c) nursing notes;
 - (d) physician treatment orders;
 - (e) records made by staff regarding daily care of the person in service;
 - (f) accident and injury reports; and
 - (g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1), (2), and (5).

(11) If a person has an advanced directive, a copy shall be filed in the respite record and staff shall be informed of the advanced directive.

R432-270-29b. Adult Day Care Services.

(1) Assisted Living Facilities Type I and II may offer adult day care services and are not required to obtain a license from Utah Department of Human Services. If facilities provide adult day care services, they shall submit policies and procedures for Department approval.

(2) "Adult Day Care" means the care and support to three or more functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a licensed health care setting.

(3) A qualified Director shall be designated by the governing board to be responsible for the day to day program operation.

(4) The Director shall have written records on-site for each consumer and staff person, to include the following:

- (a.) Demographic information;
- (b.) An emergency contact with name, address and telephone number;
- (c.) Consumer health records, including the following:
 - (i) record of medication including dosage and administration;
 - (ii) a current health assessment, signed by a licensed practitioner; and
 - (iii) level of care assessment.
- (d.) Signed consumer agreement and service plan.
- (e) Employment file for each staff person which includes:
 - (i) health history;
 - (ii) background clearance consent and release form;
 - (iii) orientation completion, and
 - (iv) in-service requirements.
- (5) The program shall have written eligibility, admission and discharge policy to include the following:
 - (a) Intake process;
 - (b) Notification of responsible party;
 - (c) Reasons for admission refusal which includes a written, signed statement;
 - (d) Resident rights notification; and
 - (e) Reason for discharge or dismissal.
- (6) Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, immunizations, legal status, and social psychological factors.
- (7) A written consumer agreement, developed with the consumer, the responsible party and the Director or designee, shall be completed, signed by all parties include the following:
 - (a) Rules of the program;
 - (b) Services to be provided and cost of service, including refund policy; and
 - (c) Arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.
- (8) The Director, or designee, shall develop, implement and review the individual consumer service plan. The plan shall include the specification of daily activities and services. The service plan shall be developed within three working days of admission and evaluated semi-annually.
- (9) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. Each report will be reviewed by the Director and responsible party. The reports will be kept on file.
- (10) There shall be a daily activity schedule posted and implemented as designed. (11) Consumers shall receive direct supervision at all times and be encouraged to participate in activities.
- (12) There shall be a minimum of 50 square feet of indoor floor space per consumer designated for adult day care during program operational hours.
 - (a) Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.
 - (b) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.
 - (c) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.
- (13) Staff supervision shall be provided continually when consumers are present.
 - (a) When eight or fewer consumers are present, one staff person shall provide direct supervision.
 - (b) When 9-16 consumers are present, two staff shall provide direct supervision at all time. The ratio of one staff per

eight consumers will continue progressively.

(c) In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

R432-270-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities

September 25, 2012

26-21-5

Notice of Continuation April 10, 2014

26-21-1

R448. Health, Disease Control and Prevention, Medical Examiner.**R448-10. Unattended Death and Reporting Requirements.****R448-10-1. Authority and Purpose.**

This rule is authorized by Utah Code Section 26-1-5. It clarifies the meaning of unattended death under the provisions of Utah Code Subsection 26-4-2(8) and the requirements of Utah Code Section 26-4-8.

R448-10-2. Death Under Physician's Care and Supervision.

For purposes of Utah Code Subsection 26-4-2(8), an individual whose care is directly supervised by a physician and who has been seen by a licensed nurse whose activity is directly supervised by the physician is deemed to have been seen by the physician within the scope of the physician's professional capacity.

R448-10-3. Reporting Requirement.

(1) If a death occurs and the individual's care within 30 days prior to death was not directly supervised by a physician or if the individual was not seen by a licensed nurse whose activity is directly supervised by the individual's treating physician, then the death must be reported as required under Utah Code Section 26-4-8.

(2) All other deaths that meet the criteria in Utah Code Section 26-4-7, must be reported as required by Utah Code Section 26-4-8

(3) As required by R432-750-29, a hospice is required to report all deaths supervised by the hospice if the death was a result from injury, accident, or other possible unnatural cause.

KEY: medical examiner, unattended death, reporting death**June 19, 2000****26-1-5****Notice of Continuation April 7, 2014****26-4-2****26-4-7****26-4-8**

R448. Health, Disease Control and Prevention, Medical Examiner.**R448-20. Access to Medical Examiner Reports.****R448-20-1. Authority and Purpose.**

This rule is authorized by Utah Code Section 26-1-5. It establishes who may, under the provisions of Utah Code Subsection 26-4-17(3), access medical examiner reports generated in the investigation of a death.

R448-20-2. Access by Next-of-Kin.

(1) Next-of-kin who may access medical examiner records under the provisions of Utah Code Subsection 26-4-17(3) are as follows:

- (a) surviving spouse;
- (b) any natural or adoptive parent, regardless of whether the deceased was an adult;
- (c) any full or half sibling; and
- (d) any child aged 18 or older.

(2) All next-of-kin have equal access to medical examiner records under 26-4-17, without preference or priority.

R448-20-3. Access by a Legal Representative.

(1) Legal representatives who may access medical examiner records under the provisions of Utah Code Subsection 26-4-17(3) are as follows:

- (a) any legal guardian of the person, regardless of whether the deceased was child or an adult; and
- (b) a personal representative of the estate of the deceased appointed by a court of competent jurisdiction.

(2) All legal representatives have equal access to medical examiner records under Utah Code Subsection 26-4-17(3), without preference or priority.

R448-20-4. Request and Verification of Right to Record.

A request made under Utah Code Subsection 26-4-17(3) must be in a writing either;

(1) bearing a notary seal attesting to the identity of the individual and establishing the individual's right to the record; or

(2) signed in the presence of medical examiner staff after producing documentation establishing the individual's right to the record.

KEY: medical examiner, records**June 19, 2000****Notice of Continuation April 7, 2014****26-1-5****26-4-17**

R523. Human Services, Substance Abuse and Mental Health.**R523-4. Local Mental Health Authorities and Local Substance Abuse Authorities.****R523-4-1. Authority.**

This rule is promulgated under authority granted to the Division of Substance Abuse and Mental Health (Division) by Subsections 62A-15-105, 62A-15-108(1), 62A-15-611(2)(a), 62A-15-612(2) and 62A-15-902(2)(c).

R523-4-2. Purpose.

(1) The purpose of this rule is to provide:

(a) Clarification of the relationship between the Division, the Local Mental Health Authorities (LMHAs) and the Local Substance Abuse Authorities (LSAAs).

(b) Guidance on the formula for allocation of funding to the LMHAs and LSAAs.

(c) A process for LMHAs and LSAAs to set policies on fees for service.

(d) Guidance on carryover from funds generated through collections.

(e) Guidance on priorities for treatment.

(f) Guidance on LMHA/LSAA written statements on consumer rights.

(g) Guidance in the use of data for evaluations, research and statistical analysis.

(h) Guidance on allocation of Utah State Hospital bed days to LMHAs.

(i) Guidance on LMHA/LSAA program standards.

(j) Set maintenance of effort standards for local substance abuse authorities.

R523-4-3. Relationship Between the Division, Local Mental Health Authorities and Local Substance Abuse Authorities.

(1) LMHAs and LSAAs are the "service designees" of the Division to provide comprehensive mental health services and substance abuse services as defined by state law pursuant to Sections 17-43-301 and 17-43-302 and any other applicable state law.

(2) When the Division requires other services outside the comprehensive range specified by law, it may provide LMHAs/LSAAs the first opportunity to accept or reject the service contract. If the LMHA/LSAA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA/LSAA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA/LSAA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA/LSAA.

(3) The Division has the responsibility and authority to monitor LMHA/LSAA contracts. Each mental health/substance abuse catchment area shall be visited at least once annually to monitor compliance. The LMHA/LSAA will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA/LSAA describing the findings from the site visit.

R523-4-4. Admission to the Hospital and Coordination of Care.

(1) The Division has oversight of the Utah State Hospital as per Subsection 62A-15-103(2)(b)(ii) and shall oversee the Continuity of Care Committees for adult and children/youth patients (when the patient is a child or youth, then patient also refers to the parent and/or legal guardian), as it pertains to Admissions, Coordination of Care, Discharges and Transfers between LMHAs of patients to and from the Utah State Hospital (Hospital). The Division shall conduct monthly Continuity of

Care Committee meetings, unless the time for the meetings is postponed or canceled for good cause.

(2) Each LMHA shall assign a liaison to the Hospital as the identified representative of the LMHA.

(a) The Liaison will coordinate patient needs for admission to the Hospital and shall complete the Hospital Pre-admission packet, which includes identifying community discharge and treatment options prior to admission. Any individual or family member independently requesting voluntary Hospital admission shall be referred to the appropriate LMHA geographical area in which the individual currently resides.

(b) LMHA liaisons are responsible to participate in the coordination of care at the Hospital. This includes participation in clinical staffing, at least monthly. The liaisons and Hospital staff are required to participate in order to coordinate patient treatment, discuss the progress of assigned patients and meet with patients and Hospital staff jointly to formulate patient care.

(c) Patients admitted to the Forensic units are under the jurisdiction of the criminal court system; if the need arises the LMHA liaison will participate in community discharge placements, and follow up care.

(d) Hospital staff and liaison will coordinate discharge plans. As there are multiple factors inherent in determining "readiness for discharge," this decision will be made on an individual basis, with input from the patient, the Hospital, the LMHA and the Division as necessary. Outplacement funds shall be used to resolve financial barriers that delay or complicate patients discharge. Patient's preferences and feedback regarding discharge placements shall be considered. For adult patients the LMHA liaison is required to arrange discharge placement and follow up care once the patient is ready for discharge as indicated by the Division's REDI program (Readiness, Evaluation and Discharge Implementation). The Hospital and LMHAs are required to use the REDI program. REDI information will be distributed monthly to the Hospital, and the LMHAs to track progress toward discharge. The philosophy of the Hospital is to provide short-term inpatient care for the purpose of stabilization with the goal of transition to a less restrictive level of care as soon as possible. If the Hospital and/or the LMHA determine that the patient is ready for discharge and the coordination of the placement is not occurring the Hospital and/or liaison is required to notify the Division within five business days.

(e) The Liaison shall follow the Hospital's policies on admission, treatment, discharge, and transfers of all Hospital patients.

R523-4-5. Determining the Proper LMHA Under Special Situations.

(1) In the following special situations, the proper LMHA will be determined as follows:

(a) Homeless: Individuals who are homeless and in need of Hospital admission shall be the responsibility of the LMHA in which the individual came to the attention of local emergency services. If from out of state, the individual shall be referred to the LMHA where the individual was identified as mentally ill and in need of services.

(b) Children and Adolescent Patients: Children and Adolescents in state custody will be referred to the LMHA in which they resided prior to their custody being changed to the Division of Child and Family Services or the Division of Juvenile Justice Services

(c) Forensic Patients: When a forensic patient, placed at the Hospital pursuant to criminal adjudication as set forth in Utah Code Section 62A-15-902, and is determined to meet criteria for civil commitment the patient shall be committed to LMHA where the patient resided prior to his/her arrest.

(d) Prison Transfers: Utah State Prison inmates who are transferred to the Hospital Forensic Unit and subsequently

civily committed become the responsibility of the LMHA where the person resided prior to incarceration.

(e) Developmental Center Transfers: Individuals placed at the Utah State Developmental Center (USDC), who are transferred to the Hospital for treatment of a mental illness are the responsibility of the LMHA of their last community residence (excluding foster and group home placements less than one year in duration). If the individual was admitted to the USDC as a child, the residence of the custodial parent(s) at the time of admission to USDC will be used to determine the responsible LMHA. The LMHA is responsible for treatment and discharge planning during the course of the individual's Hospital stay.

R523-4-6. Transfer Planning Between LMHAs From Hospital.

(1) When a Hospital patient or the patient's legal guardian desires to relocate to a new geographical area, the patient's LMHA liaison (the liaison responsible for the civil bed in which the patient currently resides), will notify the receiving LMHA regarding the desire of the patient. It is the referring liaison's responsibility to discuss the matter with the patient and with the receiving LMHA and work toward discharge.

(2) The referring and receiving LMHA liaison will discuss the transfer and will provide information as needed.

(3) Once the receiving LMHA accepts the referral, the receiving LMHA will proceed with Hospital patient discharge planning. During the time period between the referral to the receiving LMHA and Hospital discharge, the Hospital patient will continue to be assessed against the bed allocation of the referring LMHA. The receiving LMHA is expected to work toward discharge.

(4) The LMHAs may negotiate an agreement (Local Authority to Local Authority) agreement if the patient returns to the Hospital, the patient returns to the referring LMHA bed. The agreement is not to exceed one year, whereby the referring LMHA agrees the patient's bed will be assessed against the bed allocation of the referring LMHA. The agreement specifies the role of each LMHA and who is responsible for providing needed services and payment for those services. Any such agreement shall be made in writing. If a Local Authority to Local Authority agreement cannot be reached, then the conflict resolution process as outlined in Section R523-4-7 below shall be followed.

(5) At the conclusion of the negotiated period, the receiving LMHA will assume all responsibility for the full continuum of mental health services, including Hospital care.

R523-4-7. Conflict Resolution.

(1) The Division will work to resolve conflicts between the Hospital and a LMHA, as well as conflicts between LMHAs.

(a) if negotiations between LMHAs and the USH regarding admissions, discharges or provisions of consumer services fail to be resolved at the local level, the following steps shall be taken:

(i) the director of the Division or designee shall appoint a committee to review the facts of the conflict and make recommendations;

(ii) if the recommendations of the committee do not adequately resolve the conflict, the clinical or medical director of the LMHA and USH clinical director shall meet and attempt to resolve the conflict;

(iii) if a resolution cannot be reached, the LMHA director and the superintendent of the USH shall meet and attempt to resolve the conflict;

(iv) if a resolution cannot be reached, the director of the Division or designee shall make the final decision.

(b) If conflicts arise between LMHAs regarding admissions, discharges, or provisions of consumer services, the

final authority for resolution shall rest with the director of the Division or designee.

R523-4-8. Formula for Allocation of Funding.

(1) The Division establishes by rule, a formula for the annual allocation of funds to local substance abuse authorities and a formula for the annual allocation of funds to the local mental health authorities.

(a) The formulas do not apply to funds used by the Division for administration, statewide services consistent with the requirements of Section 62A-15-201 et seq. for discretionary grants awarded to the Division, or funds appropriated for drug courts and the Drug Offender Reform Act.

(b) Funds used by the Division for administration shall not exceed 5% of the total annual legislative appropriation to the Division excluding the appropriation for the Utah State Hospital.

(c) The funding formulas shall be applied annually to state and federal funds appropriated by the legislature to the Division and are intended for the annual equitable distribution of these funds to the state's local mental health and substance abuse authorities.

(d) Excluding discretionary grants, DORA, Drug Court, and other programs for which Utah Code establishes the funding process, funds used by the Division for statewide substance abuse services consistent with requirements of Section 62A-15-201 et seq. shall not exceed 15% of the total annual substance abuse legislative appropriation to the Division.

(e) Population data used in the formulas shall be updated annually using the most current data available from the United States Census Bureau.

(f) New funding and/or decreases in funding shall be processed and distributed through the funding formulas.

(g) Each Local mental health authority and substance abuse authority shall provide funding equal to at least 20% of the state general fund appropriation that it receives to fund services described in that local authority's annual plan.

(i) If a local authority is unable to provide the required matching funds, the county shall be allocated the amount the county can match.

(ii) Excess funds may be allocated on a one-time basis to local authorities with the ability to provide matching funds.

(iii) If no county can provide the required match, the Division may use the funds to purchase statewide services.

(h) Changes in funding related to the adoption of new formulas in 2014 shall be phased in over a five year period beginning in State Fiscal year 2015.

(2) Funding for mental health shall be allocated as follows:

(a) The Division shall allocate 5% of mental health funds to the 24 smallest counties ranked by population as a rural differential. The rural differential shall be allocated using the following methodology:

(i) 35% divided in equal amounts to the six smallest counties.

(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.

(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.

(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.

(b) The Division shall allocate all remaining mental health funds to the local authorities on a per capita basis, according to the most current population data available from the United States Census Bureau.

(c) The funding formula may utilize a determination of need other than population if the Division establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

(3) The funding formula for substance abuse services shall

be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local substance abuse authorities.

(a) The Division shall allocate a total of \$2,390,643 in funds used for prior cost of living increases and funds previously contracted with statewide residential providers to the local authorities in an amount equal to the 2014 allocation.

(b) The Division shall allocate 5% of the remaining funds to the 24 smallest counties ranked by population. The rural differential shall be allocated using the following methodology:

(i) 35% divided in equal amounts to the six smallest counties.

(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.

(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.

(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.

(c) Sixty percent of the remaining funds shall be allocated to each county based on the incidence and prevalence of substance abuse based on the following:

(i) The percent of adults estimated to be binge drinkers as reported by the Behavioral Risk Factor Surveillance System (BRFSS).

(ii) The percent of adults estimated to be chronic drinkers as reported by BRFSS.

(iii) The percent of youth reporting alcohol use within the past 30 days by the most current Student Health and Risk Protection Survey (SHARP).

(iv) The percent of youth estimated to be binge drinkers by the most current SHARP.

(v) The percent of youth needing drug treatment as reported by the most current SHARP.

(d) Forty percent of the remaining funds shall be allocated to local authorities on a per capita basis, according to the most current population data available from the United States Census Bureau.

R523-4-5. LMHA/LSAA Fee Policy.

(1) Each LMHA/LSAA shall require all programs that receive federal and state funds from the Division and provide services to clients to establish a policy to set and collect fees.

(a) Each fee policy shall include:

(i) A fee reduction plan based on the client's ability to pay for services; and

(ii) A provision that clients who have received an assessment and require mental health or substance abuse services will not be denied services based on the lack of ability to pay.

(b) Any adjustments to the assessed fee shall follow the procedures approved by the LMHA/LSAA.

(2) The governing body of each LMHA/LSAA shall approve the fee policy and shall set a usual and customary rate for services rendered.

(3) All LMHA/LSAA programs shall provide a written explanation of the fee policy to all clients at the time of intake except in the case of emergency services.

(4) All clients shall be assessed fees based on:

(a) The usual and customary rate established by the LMHA/LSAA, or

(b) A negotiated contracted cost of services rendered to clients.

(5) Fees assessed to clients shall not exceed the average cost of delivering the service.

(6) All fees assessed to clients, including upfront administrative fees, shall be reasonable as determined by the LMHA/LSAA.

(7) All programs shall make reasonable effort to collect

outstanding fee charges and may use an outside collection agency.

(8) All programs may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.

(9) The Division shall annually review each program's policy and fee schedule to ensure that the elements set in this rule are incorporated.

R523-4-6. Collections Carryover.

(1) LMHA/LSAA programs may carry collections forward from one fiscal year to another.

(2) LMHA/LSAAs receive two general types of revenues - appropriations and collections. These terms are defined as follows:

(a) Appropriations:

(i) State appropriated monies

(ii) Federal Block Grant dollars

(iii) County Match of at least 20%

(b) Collections:

(i) First and third party reimbursements

(ii) Any other source of income generated by the LMHA/LSAA.

R523-4-7. Priorities for Services.

(1) Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The Division will receive input from the Utah Behavioral Health Planning Council on priorities for services.

(2) LMHA Priorities: Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.

(a) Effective and responsive crisis intervention, suicide prevention, assessment, direct care, and referral program available to all citizens.

(b) Provision of the least restrictive and most appropriate treatment and settings for:

(i) Children, youth, and adults with severe mental illness;

(ii) Children, youth, and adults with acute mental illness; and

(iii) Children, youth and adults who are receiving services from other divisions within the Department of Human Services.

(c) Provisions of services to children with emotional disabilities, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.

(d) Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.

(e) Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

R523-4-8. Consumers Rights.

(1) Each LMHA/LSAA shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) Consumer involvement in treatment planning.

(b) Consumer involvement in selection of their primary therapist.

(c) Consumer access to their individual treatment records.

(d) Informed consent regarding medication.

(e) Grievance procedures.

(2) This statement should also indicate the LMHA/LSAA's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and

empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The Division shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-4-9. Statewide Program Evaluation, Research, and Statistics.

(1) Responsibility for Statewide program evaluation, research, and statistics belongs to the Division. This responsibility includes data system leadership, coordination, implementation, and monitoring.

(2) The Division shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from LMHA/LSAAs; procedures for data review and dissemination; LMHA/LSAA participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

(3) The Division, in collaboration with the LMHA/LSAAs and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year.

R523-4-10. Allocation of Utah State Hospital Adult Bed Days to Local Mental Health Authorities.

(1) The Division herein establishes a formula to allocate to LMHAs the adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a).

(2) The formula established provides for allocation based on:

(a) The percentage of the state's adult population located within a LMHA catchment area; and

(b) A differential to compensate for the additional demand for hospital beds in LMHA catchment areas that are located within urban areas.

(3) The Division hereby establishes a formula to determine adult bed allocation:

(a) The most recent available population estimates are obtained from the United States Census Bureau.

(b) The total adult population figures for the State are identified. Adult means age 18 and over.

(c) Adult population numbers are identified for each county.

(d) The urban counties are identified (county classifications are determined by the lieutenant governor's office pursuant to Subsections 17-50-501 and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban) and given a differential as follows:

(i) The total number of adult beds available at the Utah State Hospital is determined.

(ii) 4.8% is subtracted from the total number of beds available for adults to be allocated as an urban differential.

(e) The total number of available adult beds minus the urban differential is multiplied by the county's percentage of the state's total adult population to determine the number of allocated beds for each county.

(f) Each catchment area's individual county numbers are added to determine the total number of beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

(g) The urban differential beds are then distributed to urban counties based on their respective percentage of urban

counties as a whole.

(h) At least one adult bed is allocated to each LMHA.

(4) In accordance with Subsection 62A-15-611(6), the Division shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.

(5) Applying the formula:

(a) Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.

(b) The Division is responsible to calculate the adult bed allocation.

(c) Each LMHA will be notified of changes in adult bed allocation.

(6) The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

(7) A LMHA may sell or loan its allocation of adult beds to another LMHA.

R523-4-11. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.

(1) The Division establishes a formula to allocate to LMHAs the pediatric beds at the Utah State Hospital.

(2) The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a LMHA catchment area.

(3) Each LMHA shall be allocated at least one pediatric bed.

(4) The formula to determine pediatric bed allocation:

(a) The most recent available population estimates are obtained from the United States Census Bureau.

(b) The total pediatric population figures for the State are identified. Pediatric means under the age of 18.

(c) Pediatric population figures are identified for each county.

(d) The total number of pediatric beds available is multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.

(e) Each catchment area's individual county numbers are added to determine the total number of pediatric beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

(5) The Division shall periodically review and make changes in the formula as necessary.

(6) Applying the formula:

(a) Adjustments of pediatric beds, as the formula is applied, shall become effective at the beginning of the new fiscal year.

(b) Each LMHA shall be notified of changes in pediatric bed allocation.

(7) The number of allocated pediatric beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

(8) A LMHA may sell or loan its allocation of pediatric beds to another LMHA.

R523-4-12. LMHA/LSAA Program Standards.

(1) The Division establishes minimum standards for LMHA/LSAA programs.

(a) Each LMHA/LSAA program shall have the appropriate current license issued by the Office of Licensing, Department of Human Services.

(b) Each LMHA/LSAA shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

(i) Be consistent with the Division Directives for the Division of Substance Abuse and Mental Health,

(ii) Designate the projected use of state and federal contracted dollars and the 20% county match dollars,

(iii) Define the LMHA/LSAA's priorities for service and the population to be served.

(c) Each LMHA shall provide or arrange for the provision of services within the following continuum of care:

- (i) Inpatient care and services (hospitalization),
- (ii) Residential care and services,
- (iii) Day treatment and Psycho-social rehabilitation,
- (iv) Outpatient care and services,
- (v) Twenty-four hour crisis care and services,
- (vi) Psychotropic medication management,
- (vii) Case management services,
- (viii) Community supports including in-home services, housing, family support services and respite services,
- (ix) Consultation, education and preventive services, including case consultation, collaboration with other county service agencies, public education and public information,
- (x) Services to persons incarcerated in a county jail or other county correctional facility.

(d) Each LMHA/LSAA shall participate in a yearly on-site evaluation conducted by the Division.

(e) The LMHA/LSAA shall be responsible for monitoring and evaluating all subcontracts to ensure:

- (i) Services delivered to consumers commensurate with funds provided,
- (ii) Progress is made toward accomplishing contract goals and objectives.

(f) The LMHA/LSAA shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-4-4 being lowered by the percent by which the county under-matches these funds.

KEY: funding formula, bed allocations, Local Mental Health Authority, Local Substance Abuse Authority
April 7, 2014

- 17-43-302
- 62A-15-103
- 62A-15-105(5)
- 62A-15-603
- 62A-15-612
- 62A-15-108
- 62A-15-704(3)(a)(i)
- 62A-15-704(3)(a)(ii)
- 62A-15-713(7)
- 62A-15-1003
- 17-43-204
- 17-43-301(4)(a)(x)
- 17-43-306

R523-4-13. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

(1) Pursuant to the requirements of Subsection 62A-15-602 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Substance Abuse and Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

R523-4-14. Distribution of Fee-On-Fine (DUI) Funds.

(1) The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the Local Substance Abuse Authorities based upon each county's percent of the total state population as determined at the time of the funding formula as described in Section R523-4-4. The Division shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated unless notified in writing by the local authority's governing board to send the funds to the local service provider.

R523-4-15. 20% Match/ Maintenance of Effort Required to Be County Tax Revenue.

(1) The Division determines that the funds required by Subsection 17-43-301(4)(a)(x) (normally called the 20% match requirement) shall be paid from tax revenues assessed by the county legislative body and collected by the County Clerk.

(2) Failure by any county to meet its obligations under this requirement shall result in the amount of State General Funds allocated to that county by formula as described in Section

R523. Human Services, Substance Abuse and Mental Health.**R523-5. Certification of Designated Examiners and Case Managers.****R523-5-1. Authority.**

(1) This rule establishes procedures and standards for administration of substance abuse and mental health services as granted by Section 62A-15-105.

R523-5-2. Purpose.

The purpose of this rule is to provide guidance on the process for designated examiners to attain certification from the Division of Substance Abuse and Mental Health (Division).

R523-5-3. Designated Examiners Certification.

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness, as defined in Subsection 62A-15-602(3).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application, the Director will initiate a review and examination of the applicants qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(vii) The applicant shall attend the training for the certification of designated examiners that is provided by the Division and pass the exam at the completion of the training with a minimum of 70% correct.

(d) The Division Director or designee will determine if experience and qualifications are satisfactory to meet the required standards. The Division Director or designee will also determine if there are any training requirements that may be waived due to prior experience and training to grant an exception of any of the above requirements.

(e) Upon satisfactory completion of the required experience and training, the Division Director or designee will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-5-4. Case Manager Certification.

(1) Definitions.

(a) "Mental Health and Substance Abuse Case Manager" means an individual under the supervision of a qualified provider employed or contracted by the local mental health or substance abuse authority, who is responsible for coordinating, advocating, linking and monitoring activities that assist individuals with serious and often persistent mental illness and serious emotional disorder in children and individuals with substance abuse disorders to access prescribed medical and related therapeutic services. Also, to promote the individual's general health and their ability to function independently and successfully in the community.

(b) "Qualified providers" include any individual who is a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed practical nurse, a licensed clinical mental health counselor, licensed marriage and family counselor, or a licensed substance abuse counselor, and employed or contracted by a local mental health authority or local substance abuse authority.

(2) A certified case manager must meet the following minimum standards:

(a) be an individual who is not a licensed mental health professional, who is supervised by one of the qualified providers listed in Subsection R523-5-4(1)(b);

(b) be at least 18 years of age;

(c) have at least a high school degree or a GED;

(d) have at least two years experience in the support of individuals with mental illness, substance abuse and/or related experience in human services.

(e) be employed or subcontracted by a local mental health authority or a local substance abuse authority;

(f) pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and

(g) completes an approved case management practicum.

(3) An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-5-4(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issue a written decision regarding the request for waiver.

(4) Applications and instructions to apply for certification to become a case manager can be obtained from the Division of Substance Abuse and Mental Health. Only complete applications supported by all necessary documents shall be considered.

(a) Individuals will be notified in writing of disposition and determination to grant or deny the application within 30 days of completion of case management requirements. The Division shall issue a certificate for three years.

(b) If the application is denied the individual may file a written appeal within 30 days to the Division Director or designee.

(5) Each certified case manager is required to complete and document eight hours of continuing education (CEU) credits each calendar year related to mental health, substance abuse or related topics.

(a) A certified case manager shall retain CEU documentation. Documentation should not be sent to the

Division unless requested for an audit.

(b) Documents to verify CEU credits include:

(i) a certificate of completion documenting continuing education validation furnished by the presenter:

(ii) a letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or

(iii) an official grade transcript verifying completion of an undergraduate or graduate course(s) of study.

(6) Certified case managers shall abide by the Rules of Professional Code of Conduct pursuant to Rule R495-876, the Department of Human Services Provider Code of Conduct Policy.

(a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.

(b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.

(c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.

(d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.

(7) If a certified case manager fails to complete the requirements for CEUs, their certificate will be revoked or allowed to expire and will not be renewed.

(8) If an individual fails the Division examination they must wait 30 days before taking the examination again. The individual may only attempt to pass the examination two times within a twelve-month period.

(9) The case managers certification must be posted and available upon request.

KEY: designated examiners, involuntary commitment, case managers

April 7, 2014

**62A-15-105
62A-15-602(3)**

R523. Human Services, Substance Abuse and Mental Health.**R523-6. Medication, Psychosurgery and Electroshock Procedures for Children, Consumer Rights, Due Process, Family Involvement.****R523-6-1. Authority.**

This rule is promulgated under authority of Section 62A-15-105.

R523-6-2. Purpose.

- (1) The purpose of this rule is to provide:
- (a) Guidance on medication procedures for children.
 - (b) Guidance on Psychosurgery and Electroshock Therapy Procedures for Children.
 - (c) Guidance on Family Involvement.
 - (d) Guidance on Consumer Rights.

R523-6-3. Definitions.

- (1) For the purposes of this administrative rule, "guardian" means a parent, and/or legal guardian, and/or legal custodian.
- (2) Neutral and Detached Fact Finder is as defined in Subsection 62A-15-703(3).
- (3) The "Division" is the Division of Substance Abuse and Mental Health (Division)
- (4) "Antipsychotic medication" means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.
- (5) A "legal custodian" is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health.
- (6) A "legal guardian" is one who is appointed by a testamentary appointment or by a court of law.

R523-6-4. Medication Procedures for Children, Legal Authority.

- (1) The Division hereby establishes due process procedures for children prior to the administration of antipsychotic medication.
- (a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division.
 - (b) A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:
 - (i) The child and guardian give consent.
 - (ii) The child or the guardian does not give consent, but a Designated Examiner determines that antipsychotic medication is an appropriate treatment through a due process proceeding as described in Section 62A-15-704.
 - (iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to Subsection R523-6-4(1)(f) below.
 - (c) A local mental health authority has the obligation to provide a child and guardian with the following information when recommending that the child be treated with antipsychotic medications:
 - (i) The nature of the child's mental illness.
 - (ii) The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.
 - (iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment.
 - (iv) The possible or probable mental health consequences to the child if recommended treatment is not administered.
 - (v) The possible side effects, if any of the recommended treatment.
 - (vi) The ability of the staff to recognize any side effects which may actually occur and the possibility of ameliorating or abating those side effects.

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable.

(viii) The right to give or withhold consent for the proposed medication treatment.

(ix) When informing a child and their guardian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.

(d) The child and guardian shall then be afforded an opportunity to sign a consent form stating that they have received the information under Subsection R523-6-4(1)(c), and that they consent to the proposed medication treatment.

(e) If either the child or guardian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with Subsection R523-6-4(1)(g).

(f) Antipsychotic medication may be administered under the following exigent circumstances:

(i) A qualified physician has determined and certifies that they believe the child is likely to cause injury to themselves or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

(A) A statement by the physician that they believe the child is likely to cause injury to themselves or others if not immediately restrained and provided medication treatment.

(B) The basis for that belief, including a statement of the child's behaviors.

(C) The medication administered.

(D) The date and time the medication was begun.

(g) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of Subsection R523-6-4(1)(h).

(h) If the child or guardian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

(i) The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.

(ii) The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and guardian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of notification being provided to the child and guardian.

(iii) Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information.

(i) Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (guardian /foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate.

(ii) The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, guardian, and any other persons

present.

(iii) The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment.

(iv) The child, guardian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

(v) Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision.

(vi) If needed, the Neutral and Detached Fact Finder may ask everyone to leave the room to allow them time to deliberate.

(j) The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

(i) The child has a mental illness; and

(ii) The child is gravely disabled and in need of medication treatment for the reason that they suffer from a mental illness such that they (a) are in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifest severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health safety; and/or

(iii) Without medication treatment, the child poses a likelihood of serious harm to themselves, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon their own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(k) The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or guardian.

(l) A child or guardian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(i) Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.

(ii) The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of the date of the appeal.

(iii) A written decision from the panel shall be provided to the child, the child's guardian, the local mental health authority providing treatment to the child, and any other appropriate party.

(m) In the event that a significant medication change is proposed, the child and/or guardian shall be provided an opportunity to give consent in accordance to Subsection R523-6-4(1)(c) of this section. If the child and guardian refuse to give consent, a medication hearing may be initiated in accordance with Subsection R523-6-4(1)(h) of this section.

(n) Medication treatment ordered pursuant to Subsection

R523-6-4(1)(h) of this section may continue after the initial hearing according to the following process:

(i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.

(ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

(iii) The Neutral and Detached Fact Finder may order continued medication treatment if they find the following conditions are met:

(A) The child is still mentally ill; and

(B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in their ability to function in the least restrictive environment, thereby making them a substantial danger to themselves or others, and

(C) The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(D) The medication treatment is in accordance with prevailing standards of accepted medical practice.

(iv) If the neutral and Detached Fact Finder approves continued medication treatment, they shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or guardian.

(v) At the end of 12 months, the case shall again be reviewed as outlined in this Subsection R523-6-4(1)(n), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-6-5. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

(1) By this rule, the Division establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy.

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority or committed to the legal custody of the Division. The following terms are herein defined:

(b) "ECT" means electroconvulsive therapy.

(c) "Psychosurgery" means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

(d) A local mental health authority has the obligation to provide a child and guardian with the following information when recommending that the child be treated with ECT or Psychosurgery:

(i) The nature of the child's mental illness;

(ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment;

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered;

(v) The possible side effects, if any, of the recommended treatment;

(vi) The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects;

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable;

(viii) The right to give or withhold consent for the proposed ECT/psychosurgery; and

(ix) When informing a child and their guardian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or

withhold consent, a due process procedure will be conducted before two Neutral and Detached Fact Finders to determine the appropriateness of such treatment.

(e) The child and guardian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in Subsection R523-6-5(1)(d) of this section, and that they consent or do not consent to the proposed treatment.

(f) If the guardian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

(g) Regardless of whether the child or guardian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

(h) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.

(i) Upon receipt of the request, the Director/Designee shall contact two Neutral and Detached Fact Finders, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

(j) The child and guardian shall be provided notice of the hearing.

(k) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document their proposed course of treatment and reason(s) justifying the proposal in the medical record.

(l) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician. Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (guardian/foster parent, etc.) present, and to ask pertinent questions.

(ii) If the child or others become disruptive during the hearing, the two Neutral and Detached Fact Finders may request that those persons be removed. The hearing shall continue in that person's absence.

(iii) The hearing shall begin with the child, guardian, and any others being informed of the purpose and procedure of the hearing.

(iv) The record shall be reviewed by the Neutral and Detached Fact Finders and the proposed treatment shall be discussed.

(v) The child, guardian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

(vi) Following the review of the case and the hearing of comments, the two Neutral and Detached Fact Finders shall render a decision.

(vii) If needed the two Neutral and Detached Fact Finders may ask everyone to leave the room to allow them time to deliberate.

(m) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

(i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

(ii) The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental

illness such that they (a) are in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health safety; and/or

(iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either:

(A) a substantial risk that physical harm will be inflicted by an individual upon their own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or

(B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or

(C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(n) The basis for the decision shall be supported by adequate documentation. The Neutral and Detached Fact Finders shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or guardian.

(o) The child and/or guardian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Director/designee of the Division within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(p) ECT or psychosurgery may be commenced within 48 hours of the decision by the Neutral and Detached Fact Finders, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Director/designee physician renders their affirmative decision.

(q) Upon receipt of a Request, the Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the guardian prior to the commencement of treatment.

(r) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in R523-6-5(1)(d) through (q) shall be followed before initiating further treatment.

R523-6-6. Family Involvement.

(1) Each mental health authority shall annually prepare and submit to the Division a plan for mental health funding and service delivery. Included in the plan shall be a method to educate families concerning mental illness and substance use disorders to promote family involvement when appropriate, and with patient consent, in the services of a family member.

(2) The Division will monitor for compliance as part of the annual quality of care site visits.

R523-6-7. Consumers Rights.

(1) Each LMHA and LSAA shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) consumer involvement in treatment planning.

(b) consumer involvement in selection of their primary

therapist.

- (c) consumer access to their individual treatment records.
- (d) informed consent regarding medication
- (e) grievance procedures

(2) This statement should also indicate the LMHA/LSAA's commitment to always treat the consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The Division shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-6-8. Declaration for Mental Health Treatment.

(1) The Division will make available information concerning the declaration for mental health treatment. Included will be information concerning available assistance in completing the document.

(2) Each LMHA shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake.

(3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the time of admittance to the hospital.

(4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

KEY: forced medication hearings and treatment procedures for children, due process, family involvement, consumer rights

April 7, 2014

62A-15-105

R590. Insurance, Administration.**R590-93. Replacement of Life Insurance and Annuities.****R590-93-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A, Subsection 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive, and Subsection 31A-22-429, which gives the commissioner authority to require statements regarding existing insurance and adopt the notice regarding replacement.

R590-93-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

(b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(ii) reduce the opportunity for misrepresentation and incomplete disclosure; and

(iii) establish penalties for failure to comply with requirements of Section 31A-22-429 and this rule.

(2) This rule applies to all insurers and producers doing life insurance and annuity transactions in this state.

(3) Unless otherwise specifically included, this rule shall not apply to transactions involving:

(a) credit life insurance;

(b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;

(c) group life insurance and annuities used to fund prearranged funeral contracts;

(d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;

(e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(f)(i) policies or contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(C) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (i), this rule shall apply to

policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) structured settlements.

(4) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

R590-93-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

(3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e). A financed purchase is a replacement.

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.

(6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the

National Association of Insurance Commissioners, dated 2006 and which are incorporated herein by reference. The notice is to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(7)(a) "Policy summary" for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

- (i) current death benefit;
- (ii) annual contract premium;
- (iii) current cash surrender value;
- (iv) current dividend;
- (v) application of current dividend; and
- (vi) amount of outstanding loan.

(b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:

- (i) the beginning and end date of the current report period;
- (ii) the policy value at the end of the previous report period and at the end of the current report period;
- (iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;
- (iv) the current death benefit at the end of the current report period on each life covered by the policy;
- (v) the net cash surrender value of the policy as of the end of the current report period; and
- (vi) the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

- (a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
- (b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (d) reissued with any reduction in cash value; or
- (e) used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

R590-93-4. Duties of Producers.

A producer shall comply with Section 31A-22-429.

R590-93-5. Duties of Insurers that Use Producers.

Each insurer shall:

(1) maintain a system of supervision and control to insure compliance with the requirements of Section 31A-22-429 and this rule that shall include at least the following:

- (a) inform its producers of the requirements of Section 31A-22-429 and this rule and incorporate the requirements into all relevant producer training manuals prepared by the insurer;
- (b) provide to each producer a written statement of the

company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;

(d) procedures to confirm that the requirements of Section 31A-22-429 and this rule have been met;

(e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

(2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:

(a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

(b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

(c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

(d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and

(e) replacements, indexed by replacing producer and existing insurer;

(3) require with or as a part of each application for life insurance or an annuity a signed statement by the applicant as to:

(a) whether the applicant has existing policies or contracts; and

(b) whether the proposed life insurance or annuity will replace, discontinue, or change an existing policy or contract;

(4) require with each application for life insurance or annuity that indicates the replacement, discontinuance, or change of an existing policy or contract, a completed notice regarding replacements as contained in Appendix A or Appendix C;

(5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection 31A-22-429(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the signed statement with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) ascertain that the sales material and illustrations required by Subsection 31A-22-429(5) are complete and accurate for the proposed policy or contract;

(7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and

(8) maintain records in any media or by any process that accurately reproduces the actual document.

R590-93-6. Duties of Replacing Insurers that Use Producers.

(1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) verify that the required forms are received and are in compliance with this rule;

(b) with respect to an electronically completed notice, the replacing insurer shall send a printed copy of the electronically executed notice to the applicant within five business days of the date the notice is received by the company;

(c) notify any other existing insurer that may be affected

by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;

(d) be able to produce copies of the notice regarding replacement required in Subsection 31A-22-429(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(e) provide to the policy or contract holder notice of the right to return the policy or contract within 30 calendar days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A-22-423.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection 31A-22-429(5) with regard to sales materials, the insurer may:

(a) require with each application a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with Subsection 31A-22-429(4); and

(b) within ten business days of the issuance of the policy or contract:

(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection 31A-22-429(4);

(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) stress the importance of retaining copies of the sales material for future reference; and

(c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

R590-93-7. Duties of the Existing Insurer.

Where a replacement is involved in the transaction, the existing insurer shall:

(1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;

(2) within 5 business days of receiving a replacement notice, send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The policy or contract information shall be provided within five business days of receipt of the request from the policy or

contract holder; and

(3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

R590-93-8. Duties of Insurers with Respect to Direct Response Solicitations.

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar document filed with the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to file the document with the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

(b) comply with the requirements of Subsection R590-93-6(1)(c), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).

R590-93-9. Violations and Penalties.

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent questions regarding existing policies or contracts and whether the proposed insurance will replace, discontinue, or change an existing policy or contract;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer;

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company; or

(f) advising a policy or contract holder to obtain policy values from an existing policy or contract with the intent to indirectly replace the policy or contract without complying with the requirements of this rule.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after

indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

R590-93-10. Relationship to Other Statutes and Rules.

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.

R590-93-11. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provision shall be and remain in full force.

R590-93-12. Enforcement Date.

The commissioner will begin enforcing the provisions of this revised rule as of the effective date of the changes.

KEY: life insurance, annuity replacement

June 11, 2013

Notice of Continuation April 7, 2014

31A-2-201

31A-23a-402

31A-22-429

R590. Insurance, Administration.**R590-98. Unfair Practice in Payment of Life Insurance and Annuity Policy Values.****R590-98-1. Authority.**

This rule is adopted pursuant to Section 31A-2-201 which empowers the commissioner to make rules necessary to implement Title 31A, and pursuant to Section 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive.

R590-98-2. Scope.

This rule shall apply to all persons transacting insurance under Title 31A.

R590-98-3. Purpose.

The purpose of this rule is to require a prompt response to policyholder requests for policy values and limit the exercise of the statutory deferral option to situations in which the financial stability of the insurer is at risk.

R590-98-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions apply for the purpose of this rule:

A. "Policy Values" means the values to which the policyholder is entitled upon request for policy loans, withdrawals, or the surrender of the policy and include cash values, accumulated dividends, coupons and other values of a similar nature.

B. "Deferral" means the withholding or delay in payment of policy values to the policyholder.

C. "Deferral" does not include the withholding or delay in payment to a policyholder of variable life insurance and variable annuity payments when the value of investment assets on which payments are based cannot be obtained because:

(1) the Securities and Exchange Commission (SEC) has restricted trading;

(2) the stock exchange is closed; or

(3) the SEC permits deferral to protect the policyholder.

D. "Policyholder" shall include, in addition to the definition in 31A-1-301, a certificate holder under a group policy.

R590-98-5. Unfair or Deceptive Acts or Practices.

The following are hereby defined as unfair or deceptive acts or practices:

A. Failing to comply with a policyholder request for policy values within 20 days of receipt of such request.

B. Exercising the nonforfeiture deferral option of Section 31A-22-408(2), 31A-22-409(3)(d), or 31A-22-420(5), in response to a request for policy values unless the financial stability of the insurer is at risk.

R590-98-6. Requirements.

A. Before an insurer exercises the right to defer the payment of any policy values, the insurer must file a written request with the commissioner. The request must include an explanation of the reason for such action, the steps to be taken by the company to alleviate the situation, the manner in which the deferment is being imposed fairly and equitably on all policyholders, the notice to policyholders as to why the company is taking such action and the anticipated date on which the policy values are expected to be available.

B. If the policy does not specify policy values between policy anniversaries, such policy values may be the values shown in the policy nonforfeiture value tables as of the end of the policy year or may be computed by the interpolation of values between policy years. If the former method is used, the company may deduct from the policy value any premiums

required to pay the policy to the next succeeding anniversary date. In no event, may premiums be deducted that will advance the paid-to date past the next succeeding anniversary date.

C. No surrender or service charge assessed by the company will be deducted from the policy values unless specifically provided in the policy.

D. With consent of the policyholder, companies may process a policy loan in lieu of cash surrender as a means to conserve business, but only if the following criteria are strictly adhered to:

(1) The computation of policy values and premium deductions, if any, will be calculated on the same basis as enumerated in B above.

(2) The policyholder must be informed fully and concisely as to the reasons the company is sending the proceeds of a policy loan as opposed to the cash surrender value, an explanation as to the effect the loan will have upon interest charges, premiums, and death benefits, and the procedures for the repayment of the loan.

(3) If a policy loan check is issued in lieu of cash surrender values, the loan shall be processed within 20 days of receipt of the request to surrender. The check for policy loan values must be immediately negotiable. A stamped, self-addressed envelope and a cash surrender form must accompany the loan value check, together with appropriate instructions as to how the policyholder should proceed to obtain the full policy surrender value. A request for the balance of the cash surrender value must be processed within ten days of receipt of such request.

R590-98-7. Penalty.

Insurers found in violation of this rule shall be subject to revocation of the Certificate of Authority or such other penalty as determined by the commissioner in accordance with law.

R590-98-8. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

R590-98-9. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date.

KEY: insurance law**January 31, 2006****Notice of Continuation April 7, 2014****31A-2-201****31A-23a-402**

R590. Insurance, Administration.**R590-166. Home Protection Service Contract Rule.****R590-166-1. Authority.**

This rule is issued by the Insurance Commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code and under Subsections 31A-6a-110(1) and (2).

R590-166-2. Purpose and Scope.

The purpose of this rule is to establish certain exemptions from the requirements of Chapter 6a of Title 31A as it relates to home protection companies as defined herein.

R590-166-3. Definition.

A. "Home protection service contract," also referred to as "home service contract" or "home warranty," means a service contract as defined by Subsection 31A-6a-101(3)(a) whereby a person, other than a builder, seller, or lessor of a home which is the subject of the contract, undertakes, for a specified period of time and for a predetermined fee, to repair or replace components, systems, or appliances of such home upon mechanical or operational failure, or to make indemnification to the holder of such contract for such repair or replacement.

B. "Home protection company" means a service contract provider as defined by 31A-6a-101(5) who issues home protection service contracts, excluding insurers authorized for casualty insurance.

R590-166-4. Rule.

A. Upon prior written notification to the commissioner, home protection companies doing business in this state who are, at the time of notification, in compliance with all the terms and provisions set forth in this rule and are in compliance with all of the terms and provisions of Chapter 6a of Title 31A, except those terms and provisions specifically exempted herein, shall be exempt from the requirements of Subsections 31A-6a-103(1)(a) and (b), and 31A-6a-103(2)(b)(iv) and the requirements of Subsections 31A-6a-104(1)(a) and (b), and 31A-6a-104(2)(a)(i); provided, however, that nothing herein shall abrogate the requirement that home protection companies file copies of the service contracts to be used in this state, and any modifications thereto as would otherwise be required pursuant to Subsections 31A-6a-103(2)(a) and (b). So long as a home protection company remains in compliance with this rule, the home protection company's election to be subject to this rule shall remain in effect until written notification to the commissioner by the company of the company's withdrawal of its election. Notwithstanding the foregoing, home protection companies who are doing business in this state prior to the effective date of this rule and who elect to be subject to this rule as of the rule's effective date shall have until 60 days from the rule's effective date to attain compliance with all the terms and provisions of the rule.

B. To assure the faithful performance of its obligations to its contract holders the home protection company shall deposit in accordance with Section 31A-2-206 an amount not less than \$10,000 for each 500 home protection service contracts in force in this state, but not to exceed \$100,000. In the event of any failure of the home protection company to perform its obligations to its contract holders, the commissioner may make equitable distributions to contract-holders from funds held on deposit.

C. In lieu of the deposit required in paragraph B above, a surety bond or irrevocable letter of credit in favor of the commissioner for \$50,000 may be filed by the home protection company. When, based on the home protection company's annual report pursuant to Section 5(A) hereof, the number of home protection service contracts issued by a protection company then in force in this state exceeds 2,500, the amount of

the surety bond or letter of credit shall be increased to \$100,000. The bond shall be issued by an insurer authorized to transact surety business in this state. Any letter of credit shall be from a bank approved by the commissioner and in a form acceptable to the commissioner. The surety bond or letter of credit shall be held for the same purpose as the deposit in lieu of which it is filed. No bond or letter of credit shall be cancelled or subject to cancellation unless at least 30 days advance notice, in writing, thereof is filed with the commissioner and evidence of other security is provided.

D. The securities, bond or letter of credit of a home protection company deposited as required by this rule shall constitute a claim fund to be administered by the commissioner for the benefit of persons sustaining actionable injury due to the insolvency or impairment of the home protection company. The commissioner may, at his option, seek assumption of an insolvent home protection company's obligations and business by a solvent company, and apply the insolvent home protection company's deposit or proceeds of any surety bond or letter of credit to this purpose.

E. Any deposit, surety bond or letter of credit shall be maintained unimpaired as long as the home protection company continues to do business in this state. Whenever the home protection company ceases to do business in this state and furnishes the commissioner proof that it has discharged or otherwise adequately provided for all its obligations to its home protection service contract holders in this state, the commissioner shall authorize release of the deposited securities, surety bond or letter of credit on file at that time.

R590-166-5. Annual Statements, Interim Reports.

A. A home protection company electing to be subject to this rule shall annually, within 90 days after the close of its fiscal year, file with the commissioner its annual statement in a form prescribed by the commissioner. Such annual statement shall include a current financial statement prepared in accordance with generally accepted accounting principles, reviewed by an independent certified public accountant, and verified by the home protection company's president and principal financial or accounting officer.

B. Each annual statement shall also report the home protection company's volume of business in this state during the preceding fiscal year, the losses thereon, open depositories at year end, and a statement of assets and liabilities.

C. A home protection company which fails to file its annual statement in the form and within the time provided in this rule may be fined \$500 for each month, or any part thereof, during which such delinquency continues, and upon notice by the commissioner, its election to be subject to this rule may be suspended or revoked until such delinquency is cured to the satisfaction of the commissioner.

D. In addition to an annual statement, the commissioner may require of any particular home protection company, in any situation where that home protection company's ability to service its obligations to holders or creditors is in reasonable doubt, such additional regular or special reports as the commissioner may deem necessary.

R590-166-6. Severability.

If a provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions is not effected.

KEY: insurance
January 24, 2006
Notice of Continuation April 7, 2014

31A-2-201
31A-6a-110

R590. Insurance, Administration.**R590-190. Unfair Property, Liability and Title Claims Settlement Practices Rule.****R590-190-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely payment of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the Insurance Department is provided in Section 31A-2-202(4).

R590-190-2. Purpose.

This rule sets forth minimum standards for the investigation and disposition of property, liability, and title claims arising under contracts or certificates issued to residents of the State of Utah. It is not intended to cover bail bonds. These standards include fair and rapid settlement of claims, protection for claimants under insurance policies from unfair claims adjustment practices and promotion of professional competence of those engaged in claim adjusting. This rule defines procedures and practices which constitute unfair claim practices. This rule is regulatory in nature and is not intended to create any private right of action.

R590-190-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in 31A-1-301, and the following:

(1) "Claim file" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.

(2) "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.

(3) "Claim representative" means any individual, corporation; association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim, whether or not licensed within the State of Utah to do so.

(4) "Days" means calendar days.

(5) "Documentation" includes, but is not limited to, any pertinent communications, transactions, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim.

(6) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to a benefit or a payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.

(7) "General business practice" means a pattern of conduct.

(8) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

(9) "Notice of claim or loss" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprizes the insurer of the facts pertinent to a claim.

(10) "Proof of loss" shall mean reasonable documentation by the insured in accordance with policy provisions and insurer

practices as to the facts of the loss and the amount of the claim.

(11) "Specific disclosure" shall mean notice to the insured by means of policy provisions in boldface type or a separate written notice mailed or delivered to the insured.

(12) "Third party claimant" means any person asserting a claim against any person under a policy or certificate of an insurer.

R590-190-4. File and Record Documentation.

Each insurer's claim files for policies or certificates are subject to examination by the commissioner of insurance or by the commissioner's duly appointed designees. To aid in such examination:

(1) the insurer shall maintain claim data that is accessible and retrievable for examination; and

(2) detailed documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to the claim.

R590-190-5. Misrepresentation of Policy Provisions.

(1) The insurer and its representatives shall fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented, including loss of use and household services.

(2) The insurer is prohibited from denying a claim based upon a first party claimant's failure to exhibit the property unless there is documentation of a breach of the policy provision in the claim file.

R590-190-6. Failure to Acknowledge Pertinent Communications.

Within 15-days every insurer shall:

(1) upon receiving notification of a claim, acknowledge the receipt of such notice unless payment is made within such period of time, or unless the insurer has a reason acceptable to the Insurance Department as to why such acknowledgment cannot be made within the time specified. Notice given to an agent of an insurer is notice to the insurer;

(2) provide a substantive response to a claimant whenever a response has been requested; and

(3) upon receiving notification of a claim, provide all necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements.

R590-190-7. Notice of Claim or Loss.

(1) Notice of Claim or Loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312.

(2) Notice of Claim or Loss may be given by an insured to any appointed agent, authorized adjuster, or other authorized claim representative of an insurer unless the insurer clearly directs otherwise by means of Specific Disclosure as defined herein.

(3) The general practice of the insurer when accepting a notice of loss or notice of claim shall be consistent for all policyholders in accordance with the terms of the policy.

R590-190-8. Proof of Loss.

Proof of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule and the requirements of Section 31A-21-312.

R590-190-9. Unfair Methods, Deceptive Acts and Practices Defined.

The commissioner, pursuant to Section 31A-26-303(4),

hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims:

(1) denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the rescission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission;

(2) failing to provide the insured or beneficiary with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial;

(3) compensation by an insurer of its employees, agents or contractors of any amounts which are based on savings to the insurer as a result of denying the payment of claims;

(4) failing to deliver a copy of the insurer's guidelines, which could include the department's statutes, rules and bulletins, for prompt investigation of claims to the Insurance Department when requested to do so;

(5) refusing to pay claims without conducting a reasonable investigation;

(6) offering first party claimants substantially less than the reasonable value of the claim. Such value may be established by one or more independent sources;

(7) making claim payments to insureds or beneficiaries not accompanied by a statement or explanation of benefits setting forth the coverage under which the payments are being made and how the payment amount was calculated;

(8) failing to pay claims within 30-days of properly executed proof of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;

(9) refusing payment of a claim solely on the basis of an insured's request to do so unless:

(a) the insured claims sovereign, eleemosynary, diplomatic, military service, or other immunity from suit or liability with respect to such claim; or

(b) the insured is granted the right under the policy of insurance to consent to settlement of claims.

(10) advising a claimant not to obtain the services of an attorney or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(11) misleading a claimant as to the applicable statute of limitations;

(12) requiring an insured to sign a release that extends beyond the occurrence or cause of action that gave rise to the claims payment;

(13) deducting from a loss or claim payment made under one policy those premiums owed by the insured on another policy, unless the insured consents;

(14) failing to settle a first party claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions;

(15) issuing checks or drafts in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer or its insured from total liability;

(16) refusing to provide a written basis for the denial of a claim upon demand of the insured;

(17) denying a claim for medical treatment after preauthorization has been given, except in cases where the insurer obtains and provides to the claimant documentation of the pre-existence of the condition for which the preauthorization has been given or if the claimant is not eligible for coverage;

(18) refusing to pay reasonably incurred expenses to an insured when such expenses resulted from a delay, as prohibited

by these rules, in claims settlement or claims payment;

(19) when an automobile insurer represents both a tortfeasor and a claimant:

(a) failing to advise a claimant under any coverage that the same insurance company represents both the tortfeasor and the claimant as soon as such information becomes known to the insurer; and

(b) allocating medical payments to the tortfeasor's liability coverage before exhausting a claimant's personal injury protection coverage.

(20) failing to pay interest at the legal rate, as provided in Title 15, Utah Code, upon amounts that are overdue under these rules. This does not apply to insurers who fail to pay Personal Injury Protection expenses when due. These expenses shall bear interest as provided in 31A-22-309(5)(c).

R590-190-10. Minimum Standards for Prompt, Fair and Equitable Settlements.

(1) The insurer shall provide to the claimant a statement of the time and manner in which any claim must be made and the type of proof of loss required by the insurer.

(2) Within 30-days after receipt by the insurer of a properly executed proof of loss, the insurer shall complete its investigation of the claim and the first party claimant shall be advised of the acceptance or denial of the claim by the insurer unless the investigation cannot be reasonably completed within that time. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within 30-days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, within 45-days after sending the initial notification and within every 45-days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for the investigation, unless the first party claimant is represented by legal counsel or public adjuster. Any basis for the denial of a claim shall be noted in the insurer's claim file and must be communicated promptly and in writing to the first party claimant. Insurers are prohibited from denying a claim on the grounds of a specific provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial.

(3) Unless otherwise provided by law, an insurer shall promptly pay every valid insurance claim. A claim shall be overdue if not paid within 30-days after the insurer is furnished written proof of the fact of a covered loss and of the amount of the loss. Payment shall mean actual delivery or mailing of the amount owed. If such written proof is not furnished to the insurer as to the entire claim, any partial amount supported by written proof or investigation is overdue if not paid within 30-days. Payments are not deemed overdue when the insurer has reasonable evidence to establish that the insurer is not responsible for the payment, notwithstanding that written proof has been furnished to the insurer.

(4) If negotiations are continuing for settlement of a claim with a claimant, who is not represented by legal counsel or public adjuster, notice of expiration of the statute of limitation or contract time limit shall be given to the claimant at least 60 days before the date on which such time limit may expire.

(5) Insurers are prohibited from making statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(6) Upon receipt of an inquiry from the insurance department regarding a claim, every licensee shall furnish a substantive response to the insurance department within the time period specified in the inquiry.

R590-190-11. Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance.

(1) When the insurance policy provides for the adjustments and settlement of automobile total losses for first party claimants on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

(a) the insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file;

(b) the insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by using:

(i) the cost of two or more comparable automobiles in the local market area when a comparable automobile is available or was available within the last 90-days to consumers in the local market area;

(ii) the cost of two or more comparable automobiles in areas proximate to the local market area, including the closest major metropolitan areas within or without the state, that are available or were available within the last 90-days to consumers when comparable automobiles are not available in the local market area pursuant to Subsection R590-190-11.(1)(b)(i);

(iii) one of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area; or

(iv) any source of determining statistically valid fair market values that meet all of the following criteria:

(A) the source shall give primary consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area;

(B) the source's database shall produce values for at least 85% of the makes and models for the last 15 model years, taking into account the values of all major options for such vehicles; and

(C) the source shall produce fair market values based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary expansion of parameters, such as time and area, to assure statistical validity.

(v) if the insurer is notified within 30-days of the receipt of the claim draft that the first party claimant cannot purchase a comparable vehicle for such market value, the company shall reopen its claim file and the following procedure(s) shall apply:

(A) the company may locate a comparable vehicle by the same manufacturer, same year, similar body style and similar options and price range for the insured for the market value determined by the company at the time of settlement. Any such vehicle must be available through licensed dealers or private sellers;

(B) the company shall either pay the difference between market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this vehicle for the insured;

(C) the company may elect to offer a replacement in accordance with the provisions set forth in Subsection R590-190-11.(1)(a); or

(D) the company may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of the loss. The company is not

required to take action under this subsection if its documentation to the first party claimant, at the time of settlement, included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style and similar options in as good or better condition as the total loss vehicle which could be purchased for the market value determined by the company before applicable deductions.

(c) when a first party claimant automobile total loss is settled on a basis which deviates from the methods described in Subsections R590-190-11.(1)(a) and (b), the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deductions for salvage, must be measurable, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

(2) Total loss settlements with a third party claimant shall be on the basis of the market value or actual cost of a comparable automobile at the time of loss. Settlement procedures shall be in accordance with Subsection R590-190-11.(1)(b) and (c), except (b)(v) shall not apply.

(3) Where liability and damages are reasonably clear, insurers are prohibited from recommending that third party claimants make a claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.

(4) Insurers are prohibited from requiring a claimant to travel an unreasonable distance to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

(5) Insurers shall include the first party claimant's deductible, if any, in subrogation demands initiated by the insurer. Subrogation recoveries may be shared on a proportionate basis with the first party claimant when an agreement is reached for less than the full amount of the loss, unless the deductible amount has been otherwise recovered. The recovery shall be applied first to reimburse the first party claimant for the amount or share of the deductible when the full amount or share of the deductible has been recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense. If subrogation is initiated but discontinued, the insured shall be advised.

(6) If an insurer prepares or approves an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. If the insurer prepares an estimate, it shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.

(7) When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions. The insurer shall provide a written explanation of these deductions to the claimant upon request.

(8) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

(9) Where coverage exists, loss of use payment shall be made to a claimant for the reasonably incurred cost of transportation, or for the reasonably incurred rental cost of a substitute vehicle, including collision damage waiver, unless the claimant has physical damage coverage available, during the

period the automobile is necessarily withdrawn from service to obtain parts or effect repair, or, in the event the automobile is a total loss and the claim has been timely made, during the period from the date of loss until a reasonable settlement offer has been made by the insurer. The insurer is prohibited from refusing to pay for loss of use for the period that the insurer is examining the claim or making other determinations as to the payability of the loss, unless such delay reveals that the insurer is not liable to pay the claim. Loss of use payments shall be an amount in addition to the payment for the value of the automobile.

(10) Subject to Subsections R590-190-11.(1) and (2), an insurer shall fairly, equitably and in good faith attempt to compensate a claimant for all losses incurred under collision or comprehensive coverages. Such compensation shall be based at least, but not exclusively, upon the following standards:

(a) an offer of settlement may not be made exclusively on the basis of useful life of the part or vehicle damaged;

(b) an estimate of the amount of compensation for the claimant shall include the actual wear and tear, or lack thereof, of the damaged part or vehicle;

(c) actual cash value, which shall take into account the cost of replacement of the vehicle and/or the part for which compensation is claimed;

(d) an actual estimate of the true useful life remaining in the part or vehicle shall be taken into account in establishing the amount of compensation of a claim; and

(e) actual cash value, which shall include taxes and other fees which shall be incurred by a claimant in replacing the part or vehicle or in compensating the claimant for the loss incurred.

(11) Insurers are prohibited from demanding reimbursement of personal injury protection payments from a first-party insured of payments received by that party from a settlement or judgement against a third party, except as provided by law.

(12) The insurer shall provide reasonable written notice to a claimant prior to termination of payment for automobile storage charges and documentation of the denial as required by Section R590-190-4. Such insurer shall provide reasonable time for the claimant to remove the vehicle from storage prior to the termination of payment.

R590-190-12. Unfair Claims Settlement Practices Applicable to Automobile Insurance.

The commissioner, pursuant to Section 31A-26-303(4), hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims:

(1) using as a basis for cash settlement with a claimant an amount which is less than the amount which the insurer would be charged if repairs were made, unless such amount is agreed to by the claimant or provided for by the insurance policy;

(2) refusing to settle a claim based solely upon the issuance of, or failure to, issue a traffic citation by a police agency;

(3) failing to disclose all coverages for which an application for benefits is required by the insurer;

(4) failing in good faith to disclose all coverages, including loss of use, household services, and any other coverages available to the claimant;

(5) requiring a claimant to use only the insurer's claim service in order to perfect a claim;

(6) failing to furnish the claimant, when requested, with the name and address of the salvage dealer who has provided a salvage quote for the amount deducted by the insurer in a total loss settlement;

(7) refusing to disclose policy limits when requested to do so by a claimant or claimant's attorney;

(8) using a release on the back of a check or draft which requires a claimant to release the company from obligation on

further claims in order to process a current claim when the company knows or reasonably should know that there will be future liability on the part of the insurer;

(9) refusing to use a separate release of a claim document rather than one on the back of a check or draft when requested to do so by a claimant;

(10) intentionally offering less money to a first party claimant than the claim is reasonably worth, a practice referred to as "low-balling;";

(11) refusing to offer to pay claims based upon the Doctrine of Comparative Negligence without a reasonable basis for doing so; and

(12) imputing the negligence of a permissive user of a vehicle to the owner of the vehicle in a bailment situation.

R590-190-13. Standards for Prompt, Fair and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage.

(1) Replacement Cost Value:

When the policy provides for the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(a) when a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacements not otherwise excluded by the policy, shall be included in the loss. The insured is only responsible for the applicable deductible; and

(b) when a loss requires replacement or repair of items and the repaired or replaced items do not match in color, texture, or size, the insurer shall repair or replace items so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured is only responsible for the applicable deductible.

(2) Actual Cash Value:

(a) When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as the replacement cost of property at the time of the loss less depreciation, if any. Upon the insured's request, the insurer shall provide a copy of relevant documentation from the claim file detailing any and all deductions for depreciation.

(b) In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value, as set forth above, is not required. In such cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

R590-190-14. Severability.

If any provision or clause of this rule or its application to any person or situation is held 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 law

July 28, 1999

Notice of Continuation April 7, 2014

31A-2-201

31A-26-301

31A-26-303

31A-21-312

31A-2-308

R590. Insurance, Administration.**R590-191. Unfair Life Insurance Claims Settlement Practices Rule.****R590-191-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely payment of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the Insurance Department is provided by Section 31A-2-202(4). Authority to require payment of interest on death proceeds is provided in Section 31A-22-428.

R590-191-2. Purpose.

This rule sets forth minimum standards for the investigation and disposition of life insurance claims arising under policies or certificates issued to residents of the State of Utah. These standards include fair and rapid settlement of claims, protecting claimants under insurance policies from unfair claims settlement practices and promoting the professional competence of those engaged in processing claims. The various provisions of this rule are intended to define procedures and practices which constitute unfair claim settlement practices. This rule is regulatory in nature and is not intended to create a private right of action.

R590-191-3. Definitions.

For the purpose of this rule the Commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

- (1) "Beneficiary" means the party entitled to receive the proceeds or benefits occurring under the policy.
- (2) "Claim File" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.
- (3) "Claim Representative" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim.
- (4) "Claimant" means a person making a claim under a policy, including an insured, policyholder, beneficiary, or the claimant's legal representative, including a member of the claimant's immediate family.
- (5) "Days" means calendar days.
- (6) "Documentation" includes, but is not limited to, all written and electronic communication records, transactions, notes, work papers, claim forms, and explanation of benefits forms relative to the claim.
- (7) "Investigation" means all activities of an insurer related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.
- (8) "Notice of Loss" means any notification, whether in writing or other means acceptable under the terms of an insurance policy to an insurer or its representative, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.
- (9) "Proof of Loss" means written proofs, such as claim forms, medical authorizations or other reasonable evidence of the claim that is ordinarily required of all claimants submitting claims.

R590-191-4. Minimum Standards for Prompt, Fair and Equitable Claim Handling Processes and Communications.

(1) Notice of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy,

subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312.

(2) Notice of loss may be given to the insurer or its representative unless the insurer clearly directs otherwise in accordance with policy provisions or in a separate written notice mailed or delivered to the claimant.

(3) Subject to policy provisions, a requirement of any notice of loss may be waived by an authorized representative of the insurer.

(4) Insurance policies may not require notice of loss to be given in a manner which is inconsistent with the actual practice of the insurer. For example, if the practice of the insurer is to accept notice of loss by telephone, the policy shall reflect that practice, and not require that the claimant furnish "immediate written notice" of loss.

(5) Within 15 days of receipt of notice of loss from a claimant, the insurer shall provide necessary claim forms, instructions, and reasonable assistance so the claimant can properly comply with company requirements for filing a claim.

(6) Proof of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312. Proof of loss requirements may not be unreasonable and should consider all of the circumstances surrounding a given claim.

(7) Within 15 days of receipt of proof of loss from a claimant, the insurer shall:

(a) provide written acknowledgment of the receipt of the proof of loss;

(b) request any necessary additional information from claimant; and

(c) commence any necessary investigation of the claim, including requesting additional information from other parties having documentation or information relating to the claim; or

(d) provide the claim settlement and a written explanation of benefits to the claimant if no additional information or investigation is necessary.

(8) Within 15 days of receipt of any communications relating to a claim which reasonably suggests that a response is expected, the insurer shall substantively respond to such communication.

(9) Within 30 days of receipt of proof of loss from the claimant, the insurer shall complete the investigation of a claim, unless such investigation cannot reasonably be completed within such time. It shall be the burden of the insurer to establish, by adequate records, that the investigation could not be completed within 30 days of its receipt of proof of loss. If the investigation cannot be completed within 30 days, the insurer shall communicate to the claimant a written explanation as to the reasons for the delay and shall continue to so communicate at least every 30 days until the claim is either settled or denied.

(10) Within 15 days of completion of the investigation, the insurer shall either:

(a) provide the claim settlement and a written explanation of benefits to the claimant; or

(b) provide, in writing, a denial of the claim and an explanation to the claimant as to the reasons for the denial.

(11) Closing a claim file without settlement is considered a denial and must be so communicated in writing to the claimant and according to the provisions of the policy.

(12) If recalculation/revisitation of a claim becomes necessary subsequent to either denial or settlement, the insurer shall again comply with the initial claim handling process requirements as described in this section.

(13) Upon receipt of an inquiry from the Insurance Department regarding a claim, every licensee shall furnish a substantive response to the Insurance Department within the time period specified in the inquiry.

R590-191-5. Unfair Claims Settlement Practices.

The commissioner, pursuant to 31A-26-303(4), hereby finds the following acts or failure to perform required acts to be misleading, deceptive, unfairly discriminatory, or overreaching in the settlement of claims:

(1) concealing from or failing to fully disclose to a claimant any benefits, limitations, exclusions, coverages, or other relevant provisions of an insurance policy or insurance contract under which a claim is presented;

(2) denying or threatening the denial of a claim for any reason which is not clearly described in the policy;

(3) refusing to settle claims without conducting a reasonable and complete investigation;

(4) refusing to provide a written basis for the denial of a claim upon demand of the claimant;

(5) failing to provide the claimant with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial;

(6) compensating employees, agents or contractors of any amounts which are based on savings to the insurer as a result of reducing or denying claims;

(7) making a claim settlement to the claimant not accompanied by a statement or explanation of benefits setting forth the coverage under which the settlement is being made and how the settlement amount was calculated;

(8) failing to settle a claim following receipt of proof of loss when liability is reasonably clear in order to influence other claim settlements under other portions of the insurance policy coverage or under other policies of insurance;

(9) advising a claimant not to obtain the services of an attorney or other advocate or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(10) misleading a claimant as to the applicable statute of limitations;

(11) issuing a check or draft in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer from total liability;

(12)(a) for policies issued prior to May 5, 2008, failing to pay interest at the legal rate, as provided in Title 15 of the Utah Code upon amounts that are overdue under these rules. A claim shall be considered overdue if not settled within 15 days of completion of the investigation; or

(b) for policies issued on or after May 5, 2008, failing to pay interest in accordance with Section 31A-22-428; and

(13) failing to deliver a copy of the insurer's guidelines for prompt investigation of claims to the Insurance Department when requested to do so.

R590-191-6. File and Record Documentation.

Each insurer's claim files for policies or certificates are subject to examination by the commissioner of insurance or by the commissioner's duly appointed designees. To aid in such examination:

(1) The insurer shall maintain accessible and retrievable claim file data for examination. The insurer shall be able to provide the policy number, certificate number if any, duplicate of the policy as issued, date of loss, date notice of loss was received, date proof of loss was received, date any investigation commenced, date the investigation was completed, date of settlement or denial of the claim or date the claim was closed without settlement, documentation as to how the claim was settled and how any payments were calculated, and any other documentation relied upon for claim settlement by the insurer. This data shall be available for all open and closed files for at least the most recent three year period, or, for a Utah domiciled

insurer, since the date of the previous examination by the department, whichever is longer.

(2) Detailed documentation shall be contained in each claim file in order to permit reconstruction of the insurer's activities relative to each claim.

(3) Each document within the claim file shall be noted as to date received, date processed or date mailed.

(4) The claim file records must be maintained either in hard copy files, or some other format that has the capability of duplication to hard copy.

R590-191-7. 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.

R590-191-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule immediately upon the effective date.

R590-191-9. Severability.

If any provision or clause of this rule or its application to any person or situation is held 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.

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31A-2-308

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31A-22-428

31A-26-301

31A-26-303

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 ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-227 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

C. The "Utah Annuity Filing Certification" 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

April 9, 2014

Notice of Continuation March 18, 2014

31A-2-201

31A-2-201.1

31A-2-202

R602. Labor Commission, Adjudication.**R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.****R602-2-1. Pleadings and Discovery.****A. Definitions.**

1. "Commission" means the Labor Commission.
2. "Division" means the Division of Adjudication within the Labor Commission.
3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.
4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.
5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.
6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.
7. "Petitioner" means the person or entity who has filed an Application for Hearing.
8. "Respondent" means the person or entity against whom the Application for Hearing was filed.
9. "Discovery motion" includes a motion to compel or a motion for protective order.
10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.
2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq.
3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate

documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of reasonably available, admissible medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the

administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions

available under Rule 37, Utah Rules of Civil Procedure.

10. Notwithstanding the disclosures required under Rule 602-2-1, parties shall remain obligated to respond timely and appropriately to discovery requests.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than two hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for

permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions shall be filed within 10 days from the date the motion was filed with the Division. Reply memoranda shall be filed within 5 days from the date a response was filed with the Division.

K. Motions - Length and Type

1. Without prior leave of the Administrative Law Judge, supporting memorandum shall not exceed a total of 10 pages, opposing memorandum shall not exceed 7 pages and reply memorandum shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

2. Other than one supporting and one opposing and one reply memoranda, no other memoranda shall be considered by

the Administrative Law Judge.

L. Orders on Continuances.

The Administrative Law Judge may rule, ex parte, on requests for continuances.

M. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

N. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

O. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 5 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. Motions for Review shall not exceed a total of 15 pages. Response briefs shall not exceed a total of 12 pages. Reply briefs shall not exceed a total of 5 pages. All motions and briefs shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Commission and the Appeals Board may disregard argument or other writing contained on pages which exceed the page limits.

3. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

P. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

Q. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting

a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;
2. Conflicting medical opinion of permanent physical impairment which vary more than 5% of the whole person,
3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;
4. Conflicting medical opinions related to a claim of permanent total disability, and/or
5. Medical expenses in controversy amounting to more than \$10,000.

B. Objections and Responses.

1. Time. A written Objection to a medical panel report shall be due within 20 days of when the medical panel report is served on the parties. A Response to an Objection shall be filed within 10 days from the date the Objection was filed with the Division. A Reply to an Objection shall be filed within 5 days from the date the Response is filed with the Division.

2. Length. Without prior leave of the Administrative Law Judge, Objections shall not exceed 10 pages. Responses shall not exceed 7 pages, and Replies shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

3. Other than one Objection and one Response and one Reply, no other memoranda shall be considered without prior leave of the Administrative Law Judge.

4. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be \$125 per half hour for medical panel members and \$137.50 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after January 1, 2013.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than \$125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first \$25,000, plus 20% of the weekly benefits generated in excess of \$25,000 but not exceeding \$50,000, plus 10% of the weekly benefits generated in excess of \$50,000, to a maximum of \$17,468.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed \$25,200;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed \$30,927.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers' compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

R602-2-5. Timeliness of Decisions.

A. Pursuant to Section 34A-2-801, the Commission adopts the following rule to ensure decisions on contested workers' compensation cases are issued in a timely and efficient manner.

1. This rule applies to all workers' compensation adjudication cases and motions for review filed on or after July 1, 2013.

B. Timeliness standards.

1. The Adjudication Division will issue all interim decisions and all final decisions within 60 days of the date on which the matter is ready for decision unless the parties agree to a longer period of time or issuing a decision within 60 days is impracticable. The Division will maintain a record of those cases in which a decision is not issued within 60 days.

2. The Commissioner or Appeals Board will issue all decisions on motions for review within 90 days of the date on which the motion for review is filed unless the parties agree to a longer period of time or issuing a decision within 90 days is impracticable. The Commission will maintain a record of those cases in which a decision is not issued within 90 days.

C. Yearly Report

1. The Commission shall annually provide to the Business and Labor Interim Committee a report that includes the following information:

- a. The number of cases for which an application for hearing was filed during the previous calendar year;
- b. The number of cases for which a Division decision was not issued within 60 days of the hearing;
- c. The number of cases for which a decision on a motion for review was not issued within 90 days of the date on which the motion for review was filed;
- d. The number of cases for which an application for hearing was filed during the previous year that resulted in a final Commission decision issued within 18 months of the filing date; and
- e. The number of cases for which an application for hearing was filed during the previous year that did not result in a final Commission issued within 18 months of the filing date and the reason such a decision was not issued.

D. Commission decisions might not be issued within these timeframes if doing so is impracticable.

1. For purposes of this rule, "impracticable" may include but is not limited to:

- a. Cases that are sent to a medical panel;
- b. Cases in which the hearing record is left open at the request of one or more of the parties or by order of the ALJ;
- c. Cases in which one or more parties file post-hearing motions or objections;
- d. Cases in which the parties request mediation or an extension of time to pursue settlement negotiations;
- e. Cases in which due process requires subsequent or additional adjudication;
- f. Cases in which a claimant is required to amend the application for hearing or in which a respondent is required to amend a response or answer; or

e. Cases in which an appellate decision related to the pending case or a similar case may have bearing on the pending case.

E. The Commission will receive the motion for review immediately after the motion is filed with the Adjudication Division.

1. Preliminary evaluation: motions for review.

a. Immediately upon transfer of a motion for review from the Adjudication Division to the Commission, staff will review the ALJ's decision and the motion for review. Responses will be reviewed as they are submitted. Based on that review, staff will prioritize cases for decision in the following order:

- i. Cases with statutory mandates to issue quick decisions, such as requests to eliminate or reduce temporary disability compensation.
- ii. Cases that require an immediate decision in order to allow the underlying adjudicative proceeding to proceed.
- iii. Cases that can be resolved without research or extensive decision-writing.
- iv. Cases that need to be decided in a timely manner by the Appeals Board in order to be completed within 90 days.
- b. If none of these factors are present, cases will be completed in the order they are received, with the oldest cases receiving priority.

KEY: workers' compensation, administrative procedures, hearings, settlements

April 22, 2014

Notice of Continuation June 19, 2012

34A-1-301 et seq.

63G-4-102 et seq.

R628. Money Management Council, Administration.**R628-21. Conditions and Procedures for the Use of Reciprocal Deposits.****R628-21-1. Authority.**

This rule is issued pursuant to Section 51-7-17(4)(b) and 51-7-18(2)(b).

R628-21-2. Scope.

This rule applies to all public treasurers who purchase reciprocal deposits and to all qualified depositories providing reciprocal deposits.

R628-21-3. Purpose.

The purpose of this rule is to establish requirements for the investing of public funds in reciprocal deposits.

R628-21-4. Definitions.

For purposes of this rule the following terms are defined in Section 51-7-3 of the Act and when used in this rule have the same meaning as in the Act:

- (1) Council;
- (2) Commissioner;
- (3) Public funds;
- (4) Public treasurer;
- (5) Qualified depository, and;
- (6) Reciprocal deposits.

R628-21-5. General Rule.

(1) A public treasurer may invest public funds in reciprocal deposits only through qualified depositories that use a deposit account registry service. The public funds placed with a qualified depository into reciprocal deposits does not apply towards the maximum public funds allotment for that qualified depository as described in R628-11.

(2) Reciprocal deposits may only be initiated by qualified depository institutions and then re-deposited through a deposit account registry service as follows:

(a) in one or more FDIC insured depository institutions in amounts up to the relevant FDIC-insured deposit limit for a depositor in each depository institution; and

(b) in exchange for reciprocal FDIC-insured deposits made through the deposit account registry service to the qualified depository.

R628-21-6. Insurance Requirements for a Deposit Account Registry Service.

A deposit account registry service shall provide the public entity with proof of errors and omissions coverage equal to five percent of Utah public funds under management but not less than \$1,000,000 nor more than \$10,000,000 per occurrence.

R628-21-7. Reporting Requirements.

(1) A public entity shall file a written report with the Council of reciprocal deposits on or before July 31 and January 31 of each year for deposits held on June 30 and December 31 respectively.

(2) Within 10 days of the end of each month, each qualified depository institution holding reciprocal deposits on behalf of public treasurers shall file a report with the Commissioner of the total month-end amount of Utah public funds in reciprocal deposits initially deposited into the qualified depository institution and currently re-deposited in one or more FDIC insured depository institutions.

KEY: public funds, qualified depository, reciprocal deposits
April 15, 2014

51-7-17(4)(b)
51-7-18(2)(b)

R657. Natural Resources, Wildlife Resources.**R657-13. Taking Fish and Crayfish.****R657-13-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(e) "Daily limit" means the maximum limit, in number or amount, of protected aquatic wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

(j) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(k) "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(l) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth

bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Possession limit" means, for purposes of this rule only, two daily limits, including fish at home, in a cooler, camper, tent, freezer, livewell or any other place of storage.

(y) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(z) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(aa) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(dd) "Single hook" means a hook or multiple hooks having a common shank.

(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.

(gg) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(hh)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(ii) "Underwater spearfishing" means fishing by a person swimming, snorkeling, or diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other device to propel a pointed shaft to take fish from under the surface of the water.

R657-13-3. Fishing License Requirements and Free Fishing Day.

(1) A license is not required on free fishing day, a

Saturday in June, annually. All other laws and rules apply.

(2) A person 12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under 12 years of age may fish without a license and take a full daily and possession limit.

R657-13-4. Fishing Contests.

All fishing contests shall be held pursuant to R657-58 Fishing Contests and Clinics.

R657-13-5. Interstate Waters And Reciprocal Fishing Permits.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake with one fishing pole. With the purchase of a valid Utah fishing or combination license and a Utah second pole permit, or a valid Idaho fishing or combination license and an Idaho two-pole permit, an angler may fish with two poles anywhere on Bear Lake that is open to fishing. A second pole or two-pole permit must be purchased from the state of original license purchase.

(b) Only one daily limit may be taken in a single day even if licensed in both states.

(2) Reciprocal Fishing Permits

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4).)

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one daily limit may be taken in a single day even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Any person possessing a valid Utah fishing license is permitted to fish anywhere on Lake Powell, including the Arizona portion of the reservoir.

(d) A person possessing a valid Arizona fishing license shall be required to purchase a valid Utah reciprocal permit to fish the Utah waters of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except:

(a) when using a valid second pole permit in conjunction with an unexpired Utah fishing or combination license;

(b) while fishing for crayfish without the use of fish hooks;

(c) while fishing through the ice at Flaming Gorge Reservoir. A second pole permit is not required when fishing through the ice at Flaming Gorge Reservoir, or when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) No line may have attached to it more than three baited hooks, three artificial flies, or three artificial lures, except for a setline.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With More than One Pole (Second Pole Permits).

(1) A person may use a second pole to take fish on all waters open to fishing provided they have an unexpired fishing or combination license and a valid second pole permit, except as provided in Subsection (5) below.

(2)(a) A second pole permit may be obtained through the division's web site, from license agents and division offices.

(b)(i) A second pole permit is a 365 day permit valid only when used in conjunction with an unexpired Utah fishing or combination license.

(ii) A second pole permit does not allow an angler to take more than one daily limit or to possess more than one possession limit.

(3) Anglers under 12 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

(5) A person may use up to six lines without a second pole permit when fishing at Flaming Gorge Reservoir through the ice. When using more than two lines at Flaming Gorge Reservoir, the angler's name shall be attached to each line, pole, or tip-up, and the angler shall check only their lines.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2)(a) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to any valid Utah fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with any unexpired Utah fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) A person possessing a valid Utah fishing or combination license may engage in underwater spearfishing, only as provided in this Section.

(2) The following waters are open to underwater spearfishing from January 1 through December 31 for all species of game fish, unless specified otherwise by individual water:

- (a) Big Sand Wash Reservoir (Duchesne County);
 - (b) Brown's Draw Reservoir (Duchesne County);
 - (c) Causey Reservoir (Weber County);
 - (d) Deer Creek Reservoir (Wasatch County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;
 - (e) East Canyon Reservoir (Morgan County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;
 - (f) Echo Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;
 - (g) Electric Lake (Emery County);
 - (h) Fish Lake (Sevier County), except underwater spearfishing for any game fish is closed from September 16 to the first Saturday in June the following year;
 - (i) Flaming Gorge Reservoir (Daggett County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;
 - (j) Grantsville Reservoir (Tooele County);
 - (k) Ken's Lake (San Juan County);
 - (l) Lake Powell (Garfield, Kane and San Juan Counties), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;
 - (m) Newcastle Reservoir (Iron County), except underwater spearfishing is closed for all species of game fish other than wipers and rainbow trout;
 - (n) Pineview Reservoir (Weber County), except underwater spearfishing is closed for:
 - (i) largemouth and small mouth bass from April 1 through the fourth Saturday in June; and
 - (ii) tiger musky year round.
 - (o) Porcupine Reservoir (Cache County);
 - (p) Recapture Reservoir (San Juan County);
 - (q) Red Fleet Reservoir (Uintah County);
 - (r) Rockport Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;
 - (s) Sand Lake (Uintah County);
 - (t) Smith-Moorehouse Reservoir (Summit County);
 - (u) Starvation Reservoir (Duchesne County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;
 - (v) Steinaker Reservoir (Uintah County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;
 - (w) Willard Bay Reservoir (Box Elder County); and
 - (x) Yuba Reservoir (Juab and Sanpete Counties).
- (3) Nongame fish, excluding prohibited species listed in Section R657-13-13, may be taken by underwater spearfishing:
- (a) in the waters listed in Subsection (2) and at Blue Lake (Tooele County) for tilapia only; and
 - (b) during the open angling season set for a given body of water.

(4) The waters listed in Subsections (2) and (3)(a) are the only waters open to underwater spearfishing for game or nongame fish, except carp may be taken by means of underwater spearfishing from any water open to angling during the open

angling season set for a given body of water.

(5)(a) Underwater spearfishing is permitted from official sunrise to official sunset only, except burbot may be taken by underwater spearfishing at Flaming Gorge Reservoir (Daggett County) between official sunset and official sunrise.

(b) No other species of fish may be taken with underwater spearfishing techniques at Flaming Gorge Reservoir or any other water in the state between official sunset and official sunrise.

(6)(a) Use of artificial light is unlawful while engaged in underwater spearfishing, except artificial light may be used when underwater spearfishing for burbot at Flaming Gorge Reservoir (Daggett County).

(b) Artificial light may not be used when underwater spearfishing for fish species other than burbot at Flaming Gorge Reservoir.

(7) Free shafting is prohibited while engaged in underwater spearfishing.

(8) The daily limit and possession limit for underwater spearfishing is the same as the daily limit and possession limit applied to anglers using other techniques in the waters listed in Subsections (2) and (3)(a), and as identified in the annual Utah Fishing Guidebook issued by the Utah Wildlife Board.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to land game fish legally taken by angling. However, they may not be used as a primary method to take game fish from Utah waters except at Bear Lake where they are permitted for Bonneville Cisco.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

(4) Hand held dipnets may also be used to take crayfish and nongame fish, except prohibited fish.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted while angling, except when underwater spearfishing. However artificial light is permitted while underwater spearfishing for burbot in Flaming Gorge or while bow fishing for carp statewide.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(2) and Section R657-13-20.

(3)(a) A person may not possess a gaff while angling, or take protected aquatic wildlife by snagging or gaffing, except:

- (i) a gaff may be used at Lake Powell to land striped bass; and
- (ii) snagging may be used at Bear Lake to take Bonneville cisco.

(b) Except as provided in Subsection (3)(a)(ii) and Section R657-13-21, a fish hooked anywhere other than the mouth must be immediately released.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, to take protected aquatic wildlife is permitted on many public waters. However, boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1) Use or possession of corn, hominy, or live baitfish while fishing is unlawful.

(2) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(3) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(4) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(5) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(f) Dead mountain sucker, white sucker, Utah sucker, reidside shiner, speckled

(6) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(7) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(8) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(9) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

(10) On any water declared infested by the Wildlife Board with an aquatic invasive species, or that is subject to a closure order or control plan under R657-60, it shall be unlawful to transport any species of baitfish (live or dead) from the infested water for use as bait in any other water of the State. Baitfish are defined as those species listed in sections (5)(b), (5)(c), (5)(f) and (8).

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

- (a) Bonytail (*Gila elegans*);
- (b) Bluehead sucker (*Catostomus discobolus*);
- (c) Colorado pikeminnow (*Ptychocheilus lucius*);
- (d) Flannelmouth sucker (*Catostomus latipinnis*);
- (e) Gizzard shad (*Dorosoma cepedianum*), except at Lake Powell;

- (f) Grass carp (*Ctenopharyngodon idella*);
- (g) Humpback chub (*Gila cypha*);
- (h) June sucker (*Chasmistes liorus*);
- (i) Least chub (*Iotichthys phlegethontis*);
- (j) Northern Leatherside chub (*Lepidomeda copei*);
- (k) Razorback sucker (*Xyrauchen texanus*);
- (l) Roundtail chub (*Gila robusta*);
- (m) Southern Leatherside chub (*Lepidomede aliciae*);
- (n) Virgin River chub (*Gila seminuda*);
- (o) Virgin spinedace (*Lepidomede mollispinis*); and
- (p) Woundfin (*Plagopterus argentissimus*).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) As provided in this Section, a person possessing a

valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(2)(a) Except as provided in Subsection (2)(b), nongame fish may be taken by angling, traps, bow and arrow, liftnets, dipnets, cast nets, seine, or spear in any water of the state with an open fishing season.

(b) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

- (i) San Juan River;
- (ii) Colorado River;
- (iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);
- (iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);
- (v) White River (Uintah County);
- (vi) Duchesne River (from Myton to confluence with Green River);
- (vii) Virgin River (Main stem, North, and East Forks).
- (viii) Ash Creek;
- (ix) Beaver Dam Wash;
- (x) Fort Pierce Wash;
- (xi) La Verkin Creek;
- (xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);
- (xiii) Diamond Fork;
- (xiv) Thistle Creek;
- (xv) Main Canyon Creek (tributary to Wallsburg Creek);
- (xvi) Provo River (below Deer Creek Dam);
- (xvii) Spanish Fork River;
- (xviii) Hobbie Creek (Utah County);
- (xix) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties);
- (xx) Raft River (from the Idaho state line, including all tributaries);
- (xxi) Weber River; and
- (xxii) Yellow Creek.

(c) Nongame fish, may be taken by underwater spearfishing in the waters and under the conditions specified in Section R657-13-9.

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Except as provided in Section R657-13-21, lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached, - except when an angler possesses a valid second pole permit in which case two hooked lines may be used. On unhooked lines, bait is tied to the line so that the crayfish grasps the bait with its claw; and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1)(a) At all waters except Strawberry Reservoir, Scofield Reservoir, Panguitch Lake, Jordanelle Reservoir and Lake Powell, game fish may be dressed, filleted, have heads and/or tails removed, or otherwise be physically altered after completing the act of fishing or reaching a fish cleaning station, camp, or principal means of land transportation. It is unlawful to possess fish while engaged in the act of fishing that have been dressed or filleted. This shall not apply to fish that are processed for immediate consumption or to fish held from a previous day's catch.

(b) Trout and/or salmon taken at Strawberry Reservoir, Scofield Reservoir and Panguitch Lake, and smallmouth bass taken at Jordanelle may not be filleted and the heads or tails may not be removed in the field or in transit.

(c) Fish may be filleted at any time and anglers may possess filleted fish at any time at Lake Powell.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4)(a) A person may not :

(i) take more than one daily limit of game fish in any one day; or

(ii) possess more than one daily limit of each species or species aggregate, unless the additional fish are:

(A) from a previous days catch;

(B) eviscerated; and

(C) within the possession limit for each species or species aggregate.

(b) A person may possess a full possession limit of Bonneville cisco without eviscerating the fish from a previous days catch.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. Season Dates and Daily and Possession Limits.

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Daily limits and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific daily, possession, or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, daily limit, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's daily limit and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5)(a) A person may not:

(i) take more than one daily limit in any one day; or

(ii) possess more than one daily limit of each species or species aggregate unless the additional fish are:

(A) from a previous days catch;

(B) eviscerated; and

(C) within the possession limit for each species or species aggregate.

(b) A person may possess a full possession limit of Bonneville cisco without eviscerating the fish from a previous days catch.

R657-13-20. Variations to General Provisions.

Variations to season dates, times, daily and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-21. Catch-and-Kill Regulations.

(1) The Wildlife Board may designate in proclamation and guidebook waters where anglers are required to kill specified aquatic animal species that are caught.

(2) A person shall immediately kill any aquatic animal caught in a water identified by the Wildlife Board in proclamation or guidebook as catch-and-kill for that species.

(a) An aquatic animal killed subject to a catch-and-kill regulation may be:

(i) retained and consumed by the angler; or

(ii) disposed of:

(A) in the water where the aquatic animal was caught;

(B) at a fish cleaning station;

(C) at the angler's place of residence; or

(D) at another location where disposal is authorized by law.

(3) A person may not release a live aquatic animal subject to a catch-and-kill regulation in the water it was caught or in any other water in the state.

KEY: fish, fishing, wildlife, wildlife law

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23-14-19

23-19-1

23-22-3

R657. Natural Resources, Wildlife Resources.**R657-62. Drawing Application Procedures.****R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

R657-62-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Application" means a form required by the Division which must be completed by a person and submitted to the Division in order to apply for a hunting permit.

(b) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on an executed contract for sale of eligible property.

(c) "Limited entry hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as a premium limited entry hunt or limited entry hunt. "Limited entry hunt" does not include cougar pursuit or bear pursuit.

(d) "Limited entry permit" means any permit obtained for a limited entry hunt,

including conservation permits, convention permits and sportsman permits.

(e)(i) "Valid application" means an application:

(A) for a permit to take a species for which the applicant is eligible to possess;

(B) for a permit to take a species regardless of estimated permit numbers;

(C) for a certificate of registration; and

(D) containing sufficient information, as determined by the division, to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may be considered valid if the application is timely corrected through the application correction process.

(f) "Waiting period" means a specified period of time that a person who has obtained a permit must wait before applying for the same permit type.

(g) "Once-in-a-lifetime hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(h) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

R657-62-3. Scope of Rule.

(1) This rule sets forth the procedures and requirements for completing and filing applications to receive the following hunting permits and/or certificates of registrations:

(a) Dedicated Hunter certificate of registrations;

(b) limited-entry deer;

(c) limited-entry elk;

(d) limited-entry pronghorn;

(e) once-in-a-lifetime;

(f) public cooperative wildlife management unit;

(g) general season deer and youth elk;

(h) bear;

(i) bear pursuit;

(j) antlerless big game;

(k) sandhill crane;

(l) sharp-tail and sage grouse;

(m) swan

(n) cougar;

(o) sportsman; and

(p) turkey.

R657-62-4. Residency Restrictions.

(1) Only a resident may apply for or obtain a resident permit or resident certificate of registration and only a nonresident may apply for or obtain a nonresident permit or nonresident certificate of registration.

(2)(a) To apply for a resident permit or certificate of registration, a person must be a resident at the time of purchase.

(b) The posting date of the drawing shall be considered the purchase date of a permit or certificate of registration issued through a drawing.

R657-62-5. Hunting on Private Lands.

(1) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. The division does not guarantee access and cannot restore lost opportunity, bonus points, or permit fees when access is denied. Hunters should contact private landowners for permission to access their land prior to applying for a permit. The Division does not have the names of landowners where hunts occur.

R657-62-6. Applications.

(1)(a) Applications are available at the division's internet address, and must be completed and submitted online by the date prescribed in the respective guidebook of the Wildlife Board.

(b) The permit fees and handling fees must be paid with a valid debit or credit card.

(c) Any license, permit or certificate of registration issued to a person is invalid where full payment is not remitted to and received by the division.

(d) A person who applies for or obtains a permit or certificate of registration must notify the division of any change in mailing address, residency, telephone number, email address, and physical description.

R657-62-7. Group Applications.

(1) When applying as a group all applicants in the group with valid applications and who are eligible to possess the permit or certificate of registration applied for shall receive a permit or certificate of registration where the group is successful in the drawing.

(2) Group members must apply for the same hunt choices.

(3) When applying as a group, if the available permit or certificate of registration quota is not large enough to accommodate the group size, the group application will not be considered.

R657-62-8. Bonus Points.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited-entry permits; or

(ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for;

(i) limited-entry deer including cooperative wildlife management unit buck deer and management buck deer;

(ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;

(iii) limited-entry pronghorn including cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime species including cooperative

wildlife management units;

- (v) bear;
- (vi) antlerless moose;
- (vii) cougar; and
- (viii) turkey

(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(c) Group applications will not be accepted when applying for bonus points.

(d) A person may apply for bonus points only during the applicable drawing application for each species.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits are issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who are not selected for reserved permits will be returned to the applicable drawing.

(5)(a) Each applicant receives a random drawing number for:

- (i) each species applied for; and
- (ii) each bonus point for that species.

(6) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing.

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit, convention permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain electronic copies of applications from 1996 to the current drawings for the purpose of researching bonus point records.

(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).

(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-9. Preference Points.

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid, unsuccessful application of the first-choice hunt when applying for a general buck deer permit; or

(ii) each valid unsuccessful application when applying for an antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, sage grouse or Swan permit; or

(iii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

- (i) general buck deer;
- (ii) antlerless deer;
- (iii) antlerless elk;
- (iv) doe pronghorn;
- (v) Sandhill Crane;
- (vi) Sharp-tailed Grouse;
- (vii) sage grouse; and
- (viii) Swan.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits.

(4) Preference points are forfeited if:

(a) a person obtains a first-choice hunt general buck deer permit through the drawing;

(b) a person obtains an antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, sage grouse or Swan permit through the drawing;

(5) Preference points are not transferable.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-10. Dedicated Hunter Preference Points.

(1) Preference points are used in the dedicated hunter certificate of registration drawing to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2) A preference point is awarded for:

(a) each valid unsuccessful application;

(b) each valid application when applying only for a preference point in the dedicated hunter drawing.

(3)(a) A person may not apply in the drawing for both a preference point and a certificate of registration.

(b) A person may not apply for a preference point if that person is ineligible to apply for a certificate of registration.

(4) Preference points are forfeited if a person obtains a certificate of registration through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the Dedicated Hunter drawing.

(6) Preference points are averaged and rounded down to the nearest whole point when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2011 to the current applicable drawing for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference

point records must be requested within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference points earned that are obtained by fraud, deceit or misrepresentation.

R657-62-11. Corrections, Withdrawals and Resubmitting Applications.

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct or reject applications.

(2)(a) An applicant may withdraw their application from the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(b) An applicant may resubmit their application, after withdrawing a previous application, for the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(c) Handling fees, hunting or combination license fees and donations will not be refunded. Resubmitted applications will incur a handling fee.

(3) To withdraw an entire group application, all applicants must withdraw their individual applications.

R657-62-12. Drawing Results.

Drawing results will be made available by the date prescribed in the respective guidebook of the Wildlife Board.

R657-62-13. License, Permit, Certificate of Registration and Handling Fees.

(1) Unsuccessful applicants will not be charged for a permit or certificate of registration.

(2) The handling fees and hunting or combination license fees are nonrefundable.

(3) All license, permit, certificate of registration and handling fees must be paid with a valid debit or credit card.

R657-62-14. Permits Remaining After the Drawing.

(1) Any permits remaining after the drawing are available on the date published in the respective guidebook of the Wildlife Board on a first-come, first-served basis from division offices, participating license agents and through the division's internet site.

R657-62-15. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods do not apply to the purchase of remaining permits sold over the counter except as provided in Section 2.

(2) Waiting periods are incurred as a result of purchasing remaining permits after the drawing. If a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-62-16. Dedicated Hunter Certificates of Registration.

(1)(a) Applicants for a dedicated hunter certificate of registration must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-38.

(b) Each prospective participant must complete Dedicated Hunter program orientation course annually before submitting an application.

(2) Group applications are accepted. Up to four applicants may apply as a group.

R657-62-17. Lifetime License Permits.

(1) Lifetime License permits shall be issued pursuant to Rule R657-17.

R657-62-18. Big Game.

(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer -limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by unit for:

(i) a statewide general archery buck deer permit; or

(ii) for general any weapon buck deer; or

(iii) for general muzzleloader buck deer; or

(iv) a dedicated hunter certificate of registration.

(2) Youth

(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Youth applicants who apply for a general buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each unit are reserved for youth hunters.

(iii) Up to four youth may apply together for youth general deer permits.

(iv) Preference points shall be used when applying.

(c) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(3) Drawing Order

(a) Permits for the big game drawing shall be drawn in the following order:

(i) limited entry, cooperative wildlife management unit and management buck deer;

(ii) limited entry, cooperative wildlife management unit and management bull elk;

(iii) limited entry and cooperative wildlife management

unit buck pronghorn;

- (iv) once-in-a-lifetime;
- (v) dedicated hunter certificate of registration;
- (vi) youth general buck deer;
- (vii) general buck deer and general buck/bull combo;
- (viii) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

- (i) limited entry, Cooperative Wildlife Management unit or management buck deer;
- (ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or
- (iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a)(iii) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Groups

(a) Limited Entry

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

(d) General season

(i) Up to four people may apply together for general deer permits.

(ii) Up to two youth may apply together for youth general any bull elk permits.

(iii) Up to four youth may apply together for youth general deer permits.

(5) Waiting Periods

(a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of two seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

(b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

(c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

(ii) A waiting period does not apply to:

(A) conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

(d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat may not apply for or receive an once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(ii) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-62-19. Black Bear.

(1) Permit and Pursuit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a limited entry bear permit or bear pursuit permit.

(b) A person may not apply for or obtain more than one bear permit within the same calendar year, except as provided in Subsection R657-33-26(4).

(c) Limited entry bear permits are valid only for the hunt unit and for the specified

season designated on the permit.

(d)(i) Applicants may select up to three hunt unit choices when applying for limited entry bear permits. Hunt unit choices must be listed in order of preference.

(ii) Applicants must specify in the application whether they want a limited entry bear permit or a limited entry bear archery permit and/or bear pursuit permit.

(e) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(f) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Sections 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry bear permit valid for the current year, may not apply for a permit thereafter for a period of two years.

R657-62-20. Antlerless Species.

(1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain an antlerless permit.

(b) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(c) A person may apply in the drawing for and draw the following permits, except as provided in Subsection (d):

(i) antlerless deer;

(ii) antlerless elk;

(iii) doe pronghorn; and

(iv) antlerless moose, if available.

(d) Any person who has obtained a buck pronghorn permit or a bull moose permit may not apply in the same year for a doe pronghorn permit or antlerless moose permit, respectively, except for permits remaining after the drawing as provided in R657-62-15.

(e) Applicants may select up to five hunt choices when

applying for antlerless deer, antlerless elk and antlerless pronghorn.

(f) Applicants may select up to two hunt choices when applying for antlerless moose.

(g) Hunt unit choices must be listed in order of preference.

(h) A person may not submit more than one application in the antlerless drawing per species.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(c) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Drawing Order

(a) Permits are drawn in the order listed in the guidebook of the Wildlife Board for taking big game.

(b) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(c) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Group Applications

(a) Up to four hunters can apply together for antlerless deer, antlerless elk and doe pronghorn

(b) Group applications are not accepted for antlerless moose.

(c) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(5) Waiting Periods

(a) Antlerless moose waiting period.

(i) Any person who draws or obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process, may not apply for or receive an antlerless moose permit thereafter for a period of five seasons.

(ii) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-62-21. Sandhill Crane, Sharp-Tailed and Sage Grouse.

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A hunting or combination license is required when taking Sandhill Crane, Sharp-Tailed and Sage Grouse and may be purchased when applying for the permit.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 15 years of age or younger on the opening day of a particular upland game hunt as posted in the guidebook of the Wildlife Board for taking upland game and turkey.

(b) Fifteen percent of the Sandhill Crane, Sharp-tailed grouse and sage grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill Crane, Sharp-tailed grouse or sage grouse permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Group applications.

(a) Up to four people may apply together.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting Periods do not apply.

R657-62-22. Swan.

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

(b) A Utah hunting or combination license is required when hunting Swan and may be purchased when applying for the permit.

(c) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(i) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(ii) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(iii) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(iv) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-6(3)(b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 15 years of age or younger on the opening day of the swan hunt as posted in the guidebook of the Wildlife Board for taking waterfowl.

(b) Fifteen percent of the Swan permits are reserved for youth hunters.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(3) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting period does not apply.

R657-62-23. Cougar.

(1) Permit Applications

(a) A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.

(b) A person may not apply for or obtain more than one cougar permit for the same year.

(c) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the proclamation of the Wildlife Board for taking cougar.

(d) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(e) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation

shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(f) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(g) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry cougar permit valid for the current season may not apply for a permit thereafter for a period of three seasons.

(b) Waiting periods are not incurred as a result of purchasing cougar harvest objective permits.

available to youth hunters.

(b) For purposes of this section "youth" means any person who is 15 years of age or younger on the posting date of the wild turkey drawing.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(d) Bonus points shall be used when applying for youth turkey permits.

(5) Landowner turkey permits shall be issued pursuant to rule R657-54.

KEY: wildlife, permits

July 9, 2012

Notice of Continuation April 14, 2014

23-14-18

23-14-19

R657-62-24. Sportsman.

(1) Permit applications.

(a) One sportsman permit is offered to residents for each of the following species:

(i) desert bighorn (ram);

(ii) bison (hunter's choice);

(iii) buck deer;

(iv) bull elk;

(v) Rocky Mountain bighorn (ram);

(vi) Rocky Mountain goat (hunter's choice);

(vii) bull moose;

(viii) buck pronghorn;

(ix) black bear;

(x) cougar; and

(xi) wild turkey.

(b) Bonus points shall not be awarded or utilized when applying for or obtaining sportsman permits.

(2) Group applications are not accepted.

(3) Waiting Periods.

(a) Any person who applies for or obtains a Sportsman Permit is subject to all waiting periods and exceptions as applicable to the species pursuant to Rule R657-41.

(b) Once-in-lifetime waiting periods.

(i) If you have obtained a once-in-a-lifetime permit through the sportsman drawing you are ineligible to apply for that once-in-a-lifetime species through the big game drawing.

(ii) If you have obtained a once-in-a-lifetime permit through the big game drawing you are ineligible to apply for that once-in-a-lifetime species through the sportsman drawing.

(c) Limited Entry waiting periods.

(i) Waiting periods do not apply to Sportsman deer, elk, pronghorn, bear or cougar.

(ii) Waiting period will not be incurred for receipt of a Sportsman deer, elk, pronghorn, bear or cougar.

R657-62-25. Turkey.

(1) Permit applications.

(a) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(b) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining one limited entry or remaining wild turkey permit.

(c) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(d) A turkey permit allows a person, using any legal weapon as provided in Section R657-54-7, to take one bearded turkey within the area and season specified on the permit.

(2) Group Applications are not accepted.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits are

R708. Public Safety, Driver License.

R708-22. Commercial Driver License Administrative Proceedings.

R708-22-1. Authority.

This rule is authorized by Subsection 53-3-221(5)(a)(i).

R708-22-2. Commercial Driver License Administrative Proceedings.

All adjudicative proceedings for commercial driver license (CDL) holders, including but not limited to, the application for and denial, disqualification, suspension or revocation of authorization to operate any particular class or classes of vehicles, shall be conducted according to applicable rules for administrative proceedings as specified in section R708-14, and R708-35.

KEY: administrative proceedings

1989

Notice of Continuation April 3, 2014

53-3-221(5)(a)(i)

63G-4-102

R708. Public Safety, Driver License.**R708-24. Renewal of a Commercial Driver License (CDL).****R708-24-1. Authority.**

This rule is promulgated pursuant to Section 53-3-413.

R708-24-2. Procedure for Renewal of a CDL.

(1) When applying for a CDL renewal, or limited-term CDL, applicants shall use the same procedure used to obtain an original CDL. The applicant shall comply with Sections 53-3-105, 53-3-407, and 49 CFR 383 and 391.

(2) All knowledge tests and/or skills tests will be waived by the Driver License Division except:

(a) the hazardous materials knowledge test which is required by 49 CFR 383.73;

(b) when changes in an applicant's medical condition may require further testing/evaluation;

(c) if there are factors, including lack of knowledge, which indicate the applicant may have an inability to operate commercial vehicles in a reasonable, prudent and safe manner.

(3) Applicants whose CDL has expired for a period of more than six months, or whose driving privileges are disqualified, suspended, or revoked, are required to complete appropriate knowledge and skills tests.

(4) Applicants shall comply with Federal Highway Administration requirements contained in 49 CFR 383.71, 383.73 and 391.

KEY: licensing

July 17, 1995

Notice of Continuation April 3, 2014

53-3-401

R708. Public Safety, Driver License.**R708-26. Learner Permit Rule.****R708-26-1. Purpose.**

The purpose of the rule is to set forth the restrictions to be imposed on a person driving a motor vehicle with a learner's permit.

R708-26-2. Authority.

This rule is authorized by Subsection 53-3-104(1)(c).

R708-26-3. Definitions.

"Learner permit" means a temporary restricted driving permit issued by the Driver License Division to a qualified person who has not completed all the requirements to obtain a full driving privilege.

R708-26-4. Restrictions.

The restrictions set forth in Section 53-3-210.5 for a driver holding a learner permit shall be printed on the permit along with any other restrictions deemed necessary by the Driver License Division.

KEY: learner permit**December 9, 2008****Notice of Continuation March 18, 2014****53-3-210**

R746. Public Service Commission, Administration.**R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.****R746-343-1. Purpose and Authority.**

This rule is to establish a program as required in Section 54-8b-10 which will provide telecommunication devices to certified deaf, or severely hearing or speech impaired persons, who qualify under certain conditions, and to provide a dual relay system using third party intervention to connect deaf or severely hearing or speech impaired persons with normal hearing persons by way of telecommunication devices.

R746-343-2. Definitions.**A. Definitions**

1. "Applicant" is a person applying for a Telecommunication Device for the Deaf, signal device, or other communication device.

2. "Audiologist" is a person who has a Master's or Doctoral degree in Audiology, is licensed in Audiology in Utah, and holds the Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association, or its equivalent.

3. "Deaf" is a hearing loss that requires the use of a TDD to communicate effectively on the telephone.

4. "Provider" is a service provider who agrees to be, if determined by the Public Service Commission, the administrator of the program or a portion of the program.

5. "Distribution center" is a facility authorized by the provider to distribute TDDs and signal devices, personal communicators, or other devices required by a recipient to communicate effectively on the telephone.

6. "Dual relay system" is the provision of voice and teletype communication between users of TDDs and other parties.

7. "Otolaryngologist" is a licensed physician specializing in ear, nose and throat medicine.

8. "Recipient" is a person who receives a TDD, signal device, personal communicator, or other device to communicate effectively on the telephone.

9. "Speech language pathologist" is a person who has a Master's or Doctoral degree in Speech Language Pathology in Utah, and holds the Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association, or its equivalent.

10. "Severely hearing impaired" is a hearing loss that requires use of TDD to communicate effectively on the telephone.

11. "Severely Speech Impaired" is a speech handicap, or disorder, that renders speech on an ordinary telephone unintelligible.

12. "Signal device" is a mechanical device that alerts a deaf, deaf-blind, or severely hearing impaired person of an incoming telephone call.

13. "Telecommunications Device for the Deaf, or TDD, is an electrical device for use with a telephone that utilizes a key board. It may also have an acoustic coupler, display screen or braille display to transmit and receive messages.

14. "Telephone relay center" is a facility administered by the provider to provide dual relay service.

15. "Commission" is the Utah Public Service Commission.

R746-343-3. Eligibility Requirements.

A. An applicant is eligible if he is deaf, severely hearing impaired, or severely speech impaired and is eligible for assistance under a low income public assistance program. The impairment must be established by the certification on an application form by a person who is permitted to practice medicine in Utah, an audiologist, otolaryngologist, speech/language pathologist, or qualified personnel within a

state agency. The applicant must provide evidence that they are currently eligible, though it is not necessary that they be participating in a low income public assistance program.

C. The provider may require additional documentation to determine applicant's eligibility.

D. During the training session required in Section R746-343-8, Training, the applicant must demonstrate an ability to send and receive messages with a TDD or other appropriate devices.

R746-343-4. Approval of an Application.**A. Approved Application--**

1. When an original application has been approved, the provider shall inform the applicant in writing of:

- a. when the original application has been approved;
- b. the location of the distribution center or designated place where the applicant may receive a TDD;
- c. the date and time of the training session as required in Section R746-343-8.

2. When the request for a replacement TDD, signal device, or other device has been approved, the provider or the distribution center shall inform the recipient of the procedure for obtaining a replacement device.

B. Denied Applications--If an original application or replacement request is denied, the provider shall inform the applicant in writing of the reasons for the denial and of applicable procedures for appeal. Denial notices shall be sent by mail. The notice shall be accompanied by instructions on the review process.

R746-343-5. Review by the Provider.

A. An applicant or recipient whose request for an original or replacement device has been denied may request that the provider review the decision.

B. The request for review shall be in writing and shall specify the basis for review and must be received by the provider within 30 days of the receipt of the notice of denial.

C. Within ten days of receiving the request for review, the provider shall inform the applicant or recipient in writing of the disposition of the request.

R746-343-6. Review by the Commission.

A. Within 20 days of the notice of denial from the provider for review, the applicant or recipient may request in writing a hearing by the Commission. The request shall specify the reasons for challenging the decision.

R746-343-7. Distribution Process.**A. Distribution Centers shall:**

1. Upon notice from the provider, distribute TDDs, signal devices, or other specified devices, to persons determined eligible under Section R746-343-3, Eligibility Requirements, and who reside in Utah;

2. Require each recipient or legal guardian to sign an agreement, Condition of Acceptance, form supplied by the provider;

3. Forward completed application forms and agreement forms to the provider;

4. Inform the provider of those applicants who fail to report for training and receipt of devices.

B. The provider shall implement a program to facilitate distribution of devices and provide training as required.

C. Neither the distribution center nor the provider shall be responsible for providing replacement paper for devices, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

R746-343-8. Training.

A. The provider shall be responsible for seeing that training is provided to each recipient and legal guardian, or significant other, in accordance with guidelines established by the provider.

R746-343-9. Replacement Devices.

A. The distribution center shall provide devices to persons determined by the provider to be eligible under Sections R746-343-3, Eligibility Requirements, and R746-343-8, Training, accept devices that need repair, and deliver devices returned by recipients to a repair center designated by the provider.

R746-343-10. Ownership and Liability.

A. TDDs, signal devices, and other devices provided by this program are the property of the state.

B. A recipient or guardian shall return a TDD, signal device, or other device, to the provider or distribution center when the recipient no longer intends to reside in Utah, is no longer qualified for the program, does not need the device, or has been notified by the provider to return the device.

C. Other than normal usage, recipients are liable for damage to or loss of a device issued under conditions of acceptance.

R746-343-11. Out of State Use.

No person shall remove a TDD, signal device, or other device from the state for a period longer than 90 days without written permission of the provider.

R746-343-12. Dual Relay Service--Telephone Relay Center.

A. A telephone relay center shall provide dual relay service seven days a week, 24 hours a day, including holidays.

B. A telephone relay center shall hire operators with specialized communication skills who shall be salaried employees.

C. A telephone relay center shall require the operators to relay each message accurately, except as otherwise specifically provided in Section R746-343-14, Criminal Activity.

R746-343-13. Confidentiality and Privacy Requirements.

A. Except as otherwise specifically provided in Section R746-343-14, Criminal Activity, a telephone relay center shall protect the privacy of persons to whom relay services are provided and shall require each operator to maintain the confidentiality of each telephone message.

B. The confidentiality and privacy of persons to whom relay services are provided will be protected by means of the following:

1. The relay center shall not maintain any form of permanent copies of messages relayed by their operators or allow the content of telephone messages relayed by their operators to be communicated to non-staff members.

2. Persons using the relay system shall not be required to provide identifying information until the party they are calling is on line, and shall only be required to identify themselves to the extent necessary to fulfill the purpose of their call.

3. Relay operators shall not leave messages with third parties unless instructed to do so by the person making the call.

4. Persons using the relay system may file complaints about the relay service to the telephone relay center or the provider, who shall review each complaint.

R746-343-14. Criminal Activity.

A. Relay operators shall not knowingly transmit telephone messages that are made in furtherance of a criminal activity as defined by Utah or federal law.

B. The confidentiality and privacy requirements of Section R746-343-13, Confidentiality and Privacy Requirements, do not apply to telephone conversations made in furtherance of a

criminal activity as defined by Utah or federal law.

R746-343-15. Surcharge.

A. The surcharge will be imposed on each telephone number of each residential and business customer in this state.

B. The surcharge established by the Commission in accordance with Subsection 54-8b-10(4) is \$.02 per month for each residential and business telephone number, subject to the limitation on surcharges related to mobile telecommunication service specified in Utah Code Ann. Subsection 54-8b-10(4)(b)(ii).

C. Subject to Subsection R746-343-15(D), the telephone number surcharge will be collected by each telecommunications corporation providing public telecommunications service to the customer and submitted, less administrative cost, to the Public Service Commission on a quarterly basis.

D. The provider will submit its budget for annual review by the Public Service Commission.

E. The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of that collection. In that case, the telecommunications corporation shall submit to the Commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection showing that the costs exceed the revenue.

KEY: public assistance, physically impaired, rates, telecommunications

May 1, 2014

54-8b-10

Notice of Continuation December 10, 2012

R895. Technology Services, Administration.**R895-7. Acceptable Use of Information Technology Resources.****R895-7-1. Purpose.**

Information technology resources are provided to state employees to assist in the efficient day to day operations of state agencies. Employees shall use information technology resources in compliance with this rule.

R895-7-2. Application.

All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education and the Board of Regents and institutions of higher education, shall comply with this rule.

R895-7-3. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Utah Technology Governance Act, Utah Code, and in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code.

R895-7-4. Employee and Management Conduct.

(1) Providing IT resources to an employee does not imply an expectation of privacy. Agency management may:

(a) View, authorize access to, and disclose the contents of electronic files or communications, as required for legal, audit, or legitimate state operational or management purposes;

(b) Monitor the network or email system including the content of electronic messages, including stored files, documents, or communications as are displayed in real-time by employees, when required for state business and within the officially authorized scope of the person's employment.

(2) An employee may engage in incidental and occasional personal use of IT resources provided that such use does not:

(a) Disrupt or distract the conduct of state business due to volume, timing, or frequency;

(b) Involve solicitation;

(c) Involve for-profit personal business activity;

(d) Involve actions, which are intended to harm or otherwise disadvantage the state; or

(e) Involve illegal and/or activities prohibited by this rule.

(3) An employee shall:

(a) comply with the Government Records Access and Management Act, as found in Section 63G-2-101 et seq., Utah Code, when transmitting information with state provided IT resources.

(b) Report to agency management any computer security breaches, or the receipt of unauthorized or unintended information.

(4) While using state provided IT resources, an employee may not:

(a) Access private, protected or controlled records regardless of the electronic form without management authorization;

(b) Divulge or make known his/her own password(s) to another person;

(c) Distribute offensive, disparaging or harassing statements including those that might incite violence or that are based on race, national origin, sex, sexual orientation, age, disability or political or religious beliefs;

(d) Distribute information that describes or promotes the illegal use of weapons or devices including those associated with terrorist activities;

(e) View, transmit, retrieve, save, print or solicit sexually-oriented messages or images;

(f) Use state-provided IT resources to violate any local, state, or federal law;

(g) Use state-provided IT resources for commercial purposes, product advertisements or "for-profit" personal

activity;

(h) Use state-provided IT resources for religious or political functions, including lobbying as defined according to Section 36-11-102, Utah Code, and rule R623-1;

(i) Represent oneself as someone else including either a fictional or real person;

(j) Knowingly or recklessly spread computer viruses, including acting in a way that effectively opens file types known to spread computer viruses particularly from unknown sources or from sources from which the file would not be reasonably expected to be connected with;

(k) Create and distribute or redistribute "junk" electronic communications, such as chain letters, advertisements, or unauthorized solicitations.

(5) Once agency management determines that an employee has violated this rule, they may impose disciplinary actions in accordance with the provisions of DHRM rule R477-11-1.

**KEY: information technology resources, acceptable use
June 8, 2004
Notice of Continuation April 15, 2014**

63F-1-206

R986. Workforce Services, Employment Development.**R986-100. Employment Support Programs.****R986-100-101. Authority.**

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104 and 35A-3-103.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

- (a) Food Stamps
- (b) Family Employment Program (FEP)
- (c) Family Employment Program Two Parent (FEPTP)
- (d) Refugee Resettlement Program (RRP)
- (e) Working Toward Employment (WTE)
- (f) General Assistance (GA)
- (g) Child Care Assistance (CC)
- (h) Emergency Assistance Program (EA)
- (i) Adoption Assistance Program (AA)
- (j) Activities funded with TANF monies

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

- (1) "AA" Adoption Assistance Program
- (2) "ALJ" Administrative Law Judge
- (3) "CC" Child Care Assistance
- (4) "CFR" Code of Federal Regulations
- (5) "DCFS" Division of Children and Family Services
- (6) "DWS" Department of Workforce Services
- (7) "EA" Emergency Assistance Program
- (8) "FEP" Family Employment Program
- (9) "FEPTP" Family Employment Program Two Parent
- (10) "GA" General Assistance
- (11) "INA" Immigration and Nationality Act
- (12) "IPV" intentional program violation
- (13) "ORS" Office of Recovery Service, Utah State Department of Human Services
- (14) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
- (15) "RRP" Refugee Resettlement Program
- (16) "SNB" Standard Needs Budget
- (17) "SSA" Social Security Administration
- (18) "SSDI" Social Security Disability Insurance
- (19) "SSI" Supplemental Security Insurance
- (20) "SSN" Social Security Number
- (21) "TANF" Temporary Assistance for Needy Families
- (22) "UCA" Utah Code Annotated
- (23) "UI" Unemployment Compensation Insurance
- (24) "USCIS" United States Citizenship and Immigration Services.
- (25) "VA" US Department of Veteran Affairs
- (26) "WTE" Working Toward Employment Program
- (27) "WIA" Workforce Investment Act
- (28) "WSL" Work Site Learning

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance."

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63G-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

- (a) basic remedial education;
- (b) adult education;
- (c) high school education;
- (d) education to obtain the equivalent of a high school diploma;

(e) education to learn English as a second language;

(f) applied technology training;

(g) employment skills training;

(h) WSL; or

(i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance" means payments, other than for food stamps, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except food stamps and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200-205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes state and federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete

his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and stepparents.

(19) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) food stamps; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) Review or recertification. Client's who are found eligible for assistance or certain exceptions under R986-200-218 are given a date for review or recertification at which point continuing eligibility is determined.

(22) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

(23) "Work Site Learning" or "WSL" means work experience or training program.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination on the Department's Internet site. If an interested party cannot obtain a copy from the Internet site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than ten pages are requested.

(2) For the Food Stamp Program, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another state.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for food stamps, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for food stamps provided the group home is an approved facility. The

state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in, in person or by mail, at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, age, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63G-2-101 through 63G-2-901 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client. All such requests must include:

(a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(4) The client is entitled to a copy of his or her file at no cost. Duplicate requests may result in an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(5) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(6) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(7) Requests for information intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the

Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or state law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and

evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide limited additional information to the child care provider identified by the client as the provider as provided in R986-700-703.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have a SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for a SSN is denied for a reason that would be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for food stamps or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise

protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received.

(5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was issued on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving food stamps must report a change in the household's gross income if the income exceeds 130% of the federal poverty level. The change must be reported within ten days of the change occurring; and

(b) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;

(ii) a change of address; and

(iii) if the only eligible child leaves the household and the household receives FEP, FEPTP or AA.

(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraphs (2)(b) and (c) of this section, the household must report, by the last day of the review month, all material changes that have occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

(4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-114a. Determining When a Document or Information is Considered Received by the Department.

(1) The date of receipt of a document filed with the Department is the date the document is actually received by the Department and not the post mark date. Any document or information received after 5 p.m. by Fax, postal mail, email or hand delivery, will be considered received the next day Department offices are open. If an application for assistance or other information is filed through the "myCase" system, it will be considered received the day it was filed online even if it is filed after 5 p.m. or on a Saturday, Sunday, or legal holiday.

(2) If a document has a due date and that due date falls on a Saturday, Sunday, or legal holiday, the time permitted for filing the document will be extended to 5 p.m. on the next day Department offices are open.

(3) "Document" as used in this section means application for assistance, verification, report, form and written notification of any kind.

(4) A verbal report or notification will be considered received on the date the client talks to a Department representative. A voice message received after 5 p.m. will be considered received the next day Department offices are open.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months will be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.

(2) Underpayments may be used to offset an overpayment for the same program.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for food stamps unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule will apply to overpayments determined under contract with the Department of Health.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPV's).

(1) Any person, including a child care provider, who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

- (a) knowingly making false or misleading statements;
- (b) misrepresenting, concealing, or withholding facts or information;
- (c) posing as someone else;
- (d) knowingly taking, using or accepting a public assistance payment the party knew or should have known they were not eligible to receive or not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;
- (e) not reporting a material change as required by and in accordance with these rules;
- (f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity; or
- (g) accessing TANF public assistance funds through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that;
 - (i) exclusively or primarily sells intoxicating liquor,
 - (ii) allows gambling or gaming, or
 - (iii) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the client receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a

criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Penalty for a Client Who Intentionally Misrepresents Residence.

A person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-118a. Improper Access of Public Assistance Benefits.

(1) A client may not access assistance payments through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that;

- (a) exclusively or primarily sells intoxicating liquor,
- (b) allows gambling or gaming, or
- (c) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) Violation of the provisions of subsection (1) of this section will result in;

- (a) a warning letter for the first offense,
- (b) a one month disqualification for the second offense, and

(c) a three month disqualification for the third and all subsequent offenses.

R986-100-119. Reporting Possible Child Abuse or Neglect.

When a Department employee has reason to believe that a child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to the Food Stamp Program will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of 7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff.

(2) Clients or Department staff may request an agency conference at any time to resolve a dispute regarding a denial or reduction of assistance.

(3) Clients may have an authorized representative attend the agency conference.

(4) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(5) If an agency conference has previously been held on

the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the dispute.

(6) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(7) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household member.

(2) Except for overpayments, advance notice is not required when:

- (a) the client requests in writing that the case be closed;
- (b) the client has been admitted to an institution under governmental administrative supervision;
- (c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;
- (d) the client's whereabouts are unknown and mail sent to the client has been returned by the post office with no forwarding address;
- (e) it has been determined the client is receiving public assistance in another state;
- (f) a child in the household has been removed from the home by court order or by voluntary relinquishment;
- (g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;
- (h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;
- (i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;
- (j) the client's certification period has expired;
- (k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;
- (l) the client has provided information to the Department, or the Department has information obtained from another reliable source, that the client is not eligible or that payment should be reduced or terminated;
- (m) the Department determines that the client willfully withheld information or;
- (n) when payment of financial assistance is made after performance under R986-200-215 and R986-400-454 no advance notice is needed when performance requirements are not met.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until ten days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and

the notice is returned by the post office or electronically with no forwarding address, the notice will be considered to have been properly served. If a client elects to receive correspondence electronically, notice is complete when sent to the client's last known email address and/or posted to the client's Department sponsored web page.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged overpayment of food stamps, the client must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the client must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the client disagrees.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.

(7) In the case of an overpayment and/or IPV the obligor may contact the presiding officer and attempt to resolve the dispute. If the dispute cannot be resolved, the obligor may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and overpayments and IPV's in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are scheduled as telephone hearings. Every party wishing to participate in the telephone hearing must call the Division of Adjudication before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the client fails to call in advance, as required by the notice of hearing, the appeal will be dismissed.

(6) If a client requires an in-person hearing, the client must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the client can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the

ALJ determines that another location is more appropriate. A client can participate from the local Employment Center.

(7) the Department is not responsible for any travel costs incurred by the client in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-125. When a Client Needs an Interpreter at the Hearing.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) If an interpreter is needed at the hearing by a client or the client's witness(es), the client may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

(1) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the client or witness for whom the interpreter will interpret.

(2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(4) The interpreter will be instructed to translate to the client the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

(1) All interested parties will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the client and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing.

If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the client can examine the case file prior to the hearing.

(4) If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.

(6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

(7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order or Dismissal for Failure to Participate.

(1) The Department will issue a default order if an obligor in an IPV or IPV overpayment case fails to participate in the administrative process. Participation for an obligor means:

(a) signing and returning to the Department an approved

stipulation for repayment and making all of the payments as agreed,

- (b) requesting and participating in a hearing, or
- (c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of a client or an obligor in a case not involving an IPV and the client or obligor fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, dismiss the request for a fair hearing.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default or Dismissal and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative as defined in R986-100-130 may request that the default order or dismissal be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order or dismissal within ten days of the issuance of the default or dismissal. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order or dismissal be set aside or a reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default or dismissal, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default or dismissal be set aside or that the hearing be reopened has satisfied the requirements of this rule.

(5) The ALJ may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. A presiding officer may, on his or her own motion, set aside a default or dismissal on the same grounds.

(6) If a request to set aside the default or dismissal or a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default or dismissal by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default or dismissal is set aside on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R986-100-132. What Constitutes Grounds to Set Aside a Default or Dismissal.

(1) A request to reopen or set aside for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation

of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules, attorneys and professional representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, setting aside the default and taking additional evidence might effect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-133. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have ten days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps or RRP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(3) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under FEP, FEPTP, GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or presiding officer. If a request for a fair hearing is not timely filed under R986-100-123, there are no further appeal rights.

KEY: employment support procedures

April 15, 2014

Notice of Continuation September 8, 2010

35A-3-101 et seq.

35A-3-301 et seq.

35A-3-401 et seq.

R986. Workforce Services, Employment Development.**R986-700. Child Care Assistance.****R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.**

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) unless the client is working for an approved child care center. This includes clients who have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or members of a corporation, partnership, limited liability partnership or company or similar legal entity.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and

returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(9) The Department may also release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

- (d) the subsidy amount for that provider;
 - (e) the subsidy deduction amount;
 - (f) the date a two party check was mailed to the client;
 - (g) a copy of the two party check on a need to know basis;
- and
- (h) the month the client is scheduled for review or reestablishment.

(10) Unused child care funds issued on the client's electronic benefit transfer (EBT) card will be removed from ("aged off") the EBT card 90 days after those funds were deposited onto the EBT card. Aged off funds will no longer be available to the client.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

- (a) licensed and accredited providers:
 - (i) licensed homes;
 - (ii) licensed family group homes; and
 - (iii) licensed child care centers.
- (b) license exempt providers who are not required by law to be licensed and are either:
 - (i) license exempt centers. Beginning March 1, 2014 at least one person who is trained in first aid and infant/child CPR must be with the children at all times including when the children are being transported in a vehicle. Centers approved to receive CC subsidies as of March 1, 2014 will be allowed 30 days from the date of notification from the Department of Health, Child Care Licensing (CCL) to submit a complete application together with certification of completion of these requirements; or
 - (ii) related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated. Beginning October 1, 2014 this category of child care provider will be replaced with DWS Family, Friend and Neighbor approved providers (FFN). The requirements for FFN approval are provided in subsection (7) of this section and in Department policy.

(c) homes with a Residential Certificate obtained from CCL.

(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

- (a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides;
- (b) because a child in the home has special needs which cannot be otherwise accommodated; or
- (c) which will accommodate the hours when the client needs child care.
- (d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.

(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(4) If an exception is granted under paragraph (2) or (3)

above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

- (a) the provider be at least 18 years of age and be legally able to work in the United States;
- (b) the provider's home is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;
- (c) there are working smoke detectors where children are provided care;
- (d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.;
- (e) there is a telephone in operating condition with a list of emergency numbers;

(f) food will be provided to the child in care. Food supplies will be maintained to prevent spoilage or contamination;

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(6) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state;

(h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run and the provider is otherwise eligible including meeting the requirements of background checks under R986-700-753;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not cooperate with a Department investigation of a potential overpayment;

(k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met; or

(l) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.

(7) FFN providers, as provided in subsection (1)(b), will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed:

(a) complete, sign and submit an application to the CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy as explained in the orientation;

(c) provide a copy of a fire clearance from the State Fire Marshal or designated local fire authority.

(d) pass a home inspection as provided in Department policy,

(e) complete an infant/child CPR training,

(f) complete first aid training and,

(g) pass a background check as required in R986-700-751 et seq.

(8) CC providers that have been approved as a license exempt provider, or apply to be an FFN approved provider will be given a grace period to complete the requirements in subsection (7) of this section as follows:

(a) the provider or applicant will be allowed up to 60 days from notification from CCL and no later than September 30, 2014 to submit a complete application to CCL together with a certification of completion of infant/child CPR training and first aid training;

(b) all requirements in subsection (7) of this section must be completed by August 31, 2014 to prevent a delay in future benefits and no later than September 30, 2014;

(c) the provider will be denied if the requirements are not met within the due dates given. After the grace period expires, all providers will be required to obtain an FFN approval and meet all requirements before being approved to care for children receiving a Department subsidy payment;

(d) an approved FFN approved provider is authorized to provide care for a limited number of children or families as defined in Department policy.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider following the procedure outlined in section R986-700-718. This is true even if the funds were authorized under R986-700-718.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-707. Subsidy Deduction and Transitional Child Care.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during transitional child care. Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will

resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning \$500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to

provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first \$50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) \$100 for each person with countable earned income; and

(d) a \$100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of

time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by

a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must complete the application process and sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense. Providers that completed the application process prior to August 1, 2011 need to provide additional information to the Department contractor. If the provider does not provide this additional information, the provider will not be eligible for CC payments as of January 1, 2012.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed an IPV as defined in R986-100-117, including forging a provider's name on a two party CC check, or committing an IPV as a provider, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(3) If the client was at fault in the creation of an overpayment for any reason other than an IPV as provided in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the

Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of six hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) CC with an provider that is not licensed, accredited, certified, or a licensed exempt center will not be approved between the hours of 12 midnight and 6 a.m. except;

(a) for a child under the age of 24 months old,

(b) to accommodate a special needs child, or

(c) under unusual circumstances and then only if approved by the Department program specialist on a case by case basis.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child

is a SSI recipient,

- (b) Division of Services for People with Disabilities,
- (c) Division of Mental Health,
- (d) State Office of Education, or
- (e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following:

- (a) the child's name,
- (b) a description of the child's disability, and
- (c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT) and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows:

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a notice of agency action to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the notice of agency action, no further action will be taken on that overpayment. If the provider does not repay the overpayment in full within six months of the notice of agency action the overpayment will become an IPV and the provider will be disqualified as a provider for one year;

(b) if the provider removes funds in excess of those authorized by the Department a subsequent time, there is no outstanding balance on any previous provider overpayment and the provider has never been disqualified, the subsequent overpayment is treated as a first overpayment. The provider will be given six months from the notice of agency action to repay the overpayment under these circumstances. If the subsequent overpayment is not repaid in full within six months of the notice of agency action, the provider will be disqualified for one year. If the provider was previously disqualified, the provider will be given 30 days from the notice of agency action to repay all outstanding overpayments in full, including all prior and subsequent overpayments. If the overpayment/s is/are not paid within 30 days, the provider will be disqualified for a period of two years. If the provider has never been disqualified but has a balance due on a previous overpayment, the provider will be given six months to repay the overpayment but may be disqualified if the first overpayment is not paid in time.

(c) a CC provider that removes unauthorized funds after having been disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(b) of this subsection will be given 30 days from the notice of agency action to repay all outstanding overpayments in full. If the

overpayment/s is not paid in full within 30 days, the provider will be permanently disqualified.

(d) each time a provider removes unauthorized funds is a separate offense even if the removal occurs on the same day. If, for instance, a provider removed funds from three separate clients on the same day, it would be three offenses. Likewise, if the provider removed unauthorized funds from the same client three times in different months, it would be three offenses.

(2) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds were accepted from a client or removed from a client's account as provided in this section but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds in the same manner as provided in subsection (1) of this section.

(3) CC providers disqualified under subsections (1) or (2) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(4) A CC provider overpayment not paid in full within the time limits specified in subsection (1) of this section will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(5) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default unless the provider is within the six month or 30 day grace period allowed under subsection (1) of this section.

(6) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(7) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(8) All disqualification periods run consecutively.

(9) A disqualification issued to a provider, including a child care center, under this subsection will follow both the provider, the principal provider, and any successor center or provider.

(a) A "successor" provider, including a child care center, that acquires the business or acquires substantially all of the assets of the provider or child care center. This includes a provider who changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by

any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) Each client requesting approval of a covered child care provider must submit to the Department a form, which will include a waiver and certification, completed and signed by the child care provider before the client's application for child care assistance can be approved. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (3) of this section. Normally, child care subsidy will not be delayed pending completion of the background check. Beginning October 1, 2014 no child care subsidy will be paid until the background check has been completed where required by law.

(2) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, the Department will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to the Department regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department prior to the background check. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(3) Fingerprint cards are not required if the Department is reasonably satisfied that the covered individual has resided in Utah for the last five years. A fingerprint card may be required, even if the individual has resided in Utah for the last five years, if requested by the Department.

(4) The Department will contract with the Department of Health (DOH) to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, the Department or DOH will forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(5) If the Department takes an action adverse to any covered individual based upon the background screening, the Department will send a written decision to the client explaining the action and the right of appeal. DOH will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where

child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the

information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes approval based upon the arrest or felony or misdemeanor charge, the Department will send a written decision to the client notifying the client that a hearing with the Department may be requested.

(3) The Department may hold the revocation or denial in abeyance until the arrest or felony or nonexempt misdemeanor charge is resolved.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) the Department or DOH will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department may revoke any existing approval and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify DOH. Failure to notify DOH may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

KEY: child care

April 15, 2014

Notice of Continuation September 8, 2010

35A-3-310

R994. Workforce Services, Unemployment Insurance.**R994-312. Employing Units Records.****R994-312-101. Recordkeeping Requirements.**

(1) Each employing unit shall, for a period of at least three calendar years, preserve and make available for inspection all records with respect to employment performed in its service.

(2) The following information is required for each pay period and for each worker;

(a) Name and social security number,

(b) Place of employment. This includes the city and town, or where appropriate the county, in which the work was performed. If work is performed in several locations, assignment of place of employment is made in the following order;

(i) the worker's base of operations,

(ii) the place from which the worker's services are directed or controlled, and

(iii) the worker's place of residence,

(c) The date hired,

(d) The date and reason for separation from work,

(e) The ending date of each pay period,

(f) The total amount of wages paid for each pay period showing separately:

(i) money wages; and

(ii) wages as otherwise defined in Section 35A-4-208 and Section R994-208-102, and

(g) Daily time cards or time records, kept in the regular course of business.

R994-312-102. Examination of Employing Unit Records: Scope and Authority.

(1) The Department is authorized to examine any and all records necessary for the administration of the Act. These records include payroll records, disbursement records, accounting records, tax returns, magnetic and electronic media, personnel records, minutes of meetings, loan documentation, articles of organization, operating agreements, and any other records which might be necessary to determine claimant eligibility and employer liability.

(2) The Department may initiate legal action to compel an employing unit to provide access to records if the employing unit fails to provide full access to records.

(3) If an employing unit maintains its records outside of this state, the employing unit may be required to submit copies of records for review within this state. The employing unit is responsible for any costs associated with providing such copies of records.

R994-312-103. Confidentiality of Records.

(1) Employers and individuals have a legitimate expectation of privacy in the information they provide to the Department. Therefore, consistent with federal and state requirements of confidentiality, it is the intent of this rule to limit access to Department records for use in:

(a) administration of the programs of the Department and the other divisions of the Department of Workforce Services;

(b) the detection and avoidance of duplicate or fraudulent claims against public assistance funds, or to avoid significant risk to public safety; and

(c) as specifically mandated by federal or state law. Department records shall not be published or open to public inspection in any manner revealing the employer's or the individual's identity except upon written request which shall set forth one or more of the following reasons for disclosure:

(i) Records used in making an initial determination or any decision by the Department may be provided to all interested parties prior to the rendering of any decision to the extent necessary for the proper presentation of the case.

(ii) Any information requested by employers concerning

claims for benefits with respect to former or current employees may be provided where the employer's reason for seeking the information is directly related to the unemployment insurance program. Information in the records may be made available to the party who submitted the information to the Department; and an individual's wage data submitted by an employer may be made available to that individual.

(iii) Information in the record may be made available to the public for any purpose following a written waiver by all parties of their rights to non-disclosure.

(iv) Employment and claim information may be disclosed by the Department to other divisions of the Department of Workforce Services for the purpose of carrying out the programs administered by the Department for the protection of workers in the work place; to the Governor's office and other governmental agencies administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation; and to any other governmental agency which is specifically authorized by federal or state law to receive such information, subject to the requirements of Subsection R994-312-304(2).

(v) Employment and claim information may be disclosed by the Department to any other public employees in the performance of their public duties only upon a determination by the Department that such disclosure will not discourage the willingness of employers to report wage and employment information or individuals to file claims for unemployment benefits, and such disclosure:

(A) is directly related to the detection or avoidance of duplicate, inconsistent or fraudulent claims against public assistance funds, or the recovery of overpayments of such funds; or

(B) is necessary to avoid a significant risk to public safety; and Disclosure pursuant to R994-312-304(1)(vi)(B) shall be subject to the requirements of Subsection R994-312-304(2).

(vi) No disclosure of employment or claim information may be made by the Department other than as set forth above. All requests for information must comply with the requirements and procedures contained in this rule. The Department will request a judicial or administrative body to withdraw any subpoena issued by that body if the subpoena does not conform to the Act and this rule.

(2) Employment and claim information may be disclosed to the divisions of the Department of Workforce Services, other governmental agencies, and other public employees only upon completion of a written agreement containing all of the following terms and conditions:

(a) The requesting division or agency must specify a bona fide need for the information, and must agree to use the information only to the extent necessary to assist in its valid administrative needs.

(b) The requesting division or agency must identify all agency officials, by position, authorized to request and receive information.

(c) The methods and timing of requests for information must be agreed upon by the Department and the requesting division or agency, and there must be provision for the appropriate reimbursement of the Department for the costs associated with furnishing the requested information.

(d) The requesting division or agency must agree to implement, at a minimum, the following requirements for safeguarding disclosed information:

(i) the disclosed information may not be used by the requesting division or agency for any purposes not specifically authorized; and

(ii) the information must be stored by the requesting division or agency in a secure place, and electronically stored information must be secured so that unauthorized persons cannot access the information; and

(iii) the requesting division or agency must instruct all persons authorized to request and receive information as to the confidential nature of the information and of the legal sanctions for unauthorized disclosure; and

(iv) the requesting division or agency must permit the Department to make on-site inspections to insure that there is a genuine need for the information, that the information is being used only for that purpose, and that state and federal confidentiality requirements are being met; and

(v) the head of the requesting division or agency must sign a written acknowledgment attesting to the confidentiality requirements of this rule.

KEY: unemployment compensation, confidentiality of information

April 15, 2014

35A-4-312

Notice of Continuation July 8, 2009