

R23. Administrative Services, Facilities Construction and Management.

R23-19. Facility Use Rules.

R23-19-1. Purpose.

The purpose of this rule is to regulate the use of state facilities and grounds as defined below, providing rules regarding political signs, as well as authorizing written policies to be created pursuant to this rule.

R23-19-2. Authority and Applicability.

(1) This Rule is authorized under Sections 63A-5-103 and 63A-5-204 which authorizes the making of rules regarding the use and management of state facilities and grounds owned or occupied by the State for the use of its department and agencies.

(2) This Rule shall apply to all state facilities and grounds except as follows:

(a) To the extent not authorized by law or the Utah Constitution, this Rule does not apply to state facilities and grounds under the jurisdiction of the legislative and judicial branches of the State of Utah government.

(b) This Rule does not apply to state facilities and grounds under the jurisdiction of the Utah State Board of Regents.

(c) This Rule does not apply to state facilities and grounds under the jurisdiction of the Capitol Preservation Board.

(d) This Rule does apply to state facilities and grounds under a lease to the extent consistent with the lease agreement, as the lease agreement shall control the use of the property under the lease. Notwithstanding this, the requirements of the constitutions of the United States and the State of Utah shall supersede the provisions of any such lease agreement and in particular, in the exercise of freedom of speech or assembly rights under such constitutions in any such leased facilities and grounds, the provisions of this rule regarding time, place and manner shall apply.

R23-19-3. Definitions.

(1) "Agency" means a State of Utah department, division or agency.

(2) "DFCM" means the Division of Facilities Construction and Management, a division within the Department of Administrative Services.

(3) "Event" or "events" are commercial, community service, private and state sponsored activities involving one or more persons. A free speech activity is not an event for purposes of this rule. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(4) "Facility Use Application" means a form, if required by the policies of the Managing Agency, which may require information identifying the event, time, location and purpose for a facility use permit that needs to be completed by a prospective user and submitted to the Managing Agency of the State Office Building.

(5) "Facility Use Permit" ("Permit") means a written permit issued by the Managing Agency authorizing the use of an area of state facilities and grounds for an event in accordance with this rule.

(6) "Freedom of Speech Activity" is as defined in Rule R23-20.

(7) "State Sponsored Activity" means any event sponsored by the state that is related to state business. This does not include extra-curricular activities.

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

(9) "Managing Agency" means the agency responsible for the management, operations and use of the facility. If DFCM is responsible for the maintenance of state facilities and grounds, the agreement between DFCM and the occupying agency shall identify the "Managing Agency."

(10) "State Facilities and Grounds" means State of Utah facilities and/or grounds where the principal use of the facility and/or grounds is related to state office or program functions or is under the control of any State of Utah agency; all of which is subject to the exclusions of Rule R23-19-2(2).

(11) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group.

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

(13) "Political Sign" means a sign regarding a candidate for political office or regarding a political issue to be considered in an election.

(14) "Commercial Solicitation" is as defined in rule R23-19-6.

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

R23-19-4. State Office Building Use Requirements.

(1) The Managing Agency may adopt policies, which require a Facility Use Permit to be submitted. Such policies may provide for a waiver of the policy adopted under this Rule R23-19-4(1) under criteria specified in the policies. The policies may specify the form of the application, including:

(a) The time, place, purpose and scope of the proposed activity;

(b) Whether the applicant requests a waiver of any requirement of this rule or provision of the Facility Use Permit;

(c) A certificate of liability insurance in the amount of \$1,000,000 per person, \$2,000,000 per occurrence, except for Freedom of Speech Activities where no insurance is required; and

(d) Any required fee subject to the following:

(i) Fees may be assessed for the use of state facilities and grounds through the written policies of the Managing Agency. When any activity is subject to a fee, the Managing Agency should consider at a minimum the actual cost to the State including utilities, janitorial, security and rental cost for equipment. The following applies to specific activities:

(ii) "Freedom of Speech Activities." There are no fees for freedom of speech activities, but costs for requested use of state equipment or supplies may be assessed through the uniformly applied policies of the Managing Agency.

(iii) "Commercial Activities" or "Private Activities" shall be assessed a fee, which is reasonably comparable to fees charged for similar activities within the County of the state facilities and grounds. There shall be no fee waiver allowed for commercial or private activities.

(iv) "Community Service Activities" shall be assessed a fee of 50 percent of the fee for a commercial activity and such fee may only be waived if requested in a facility use application and granted by the approving authority. There shall be no waiver of the fee related to the costs of requested use of state equipment and supplies, which is assessed through the uniformly applied policies of the Management Agency.

(v) "State Sponsored Activities." There are no fees for state sponsored activities, except that state agencies will be required to pay the costs and fees identified in the uniform policies of the Management Agency when the activity is not

required for the conducting of state business, such as after-hour social events, employee recognition events, and holiday parties.

(2) The proposed activity shall not interfere with the operation of governmental business or public access. No persons shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of any state facilities and grounds.

(3) The consumption, distribution or open storage of alcoholic beverages in state facilities and grounds is prohibited. This provision shall not apply to state facilities and grounds under the jurisdiction of the Department of Alcohol Beverage Control or golf courses under the Division of Parks and Recreation.

(4) Open flames, flammable fluids, candles, burning incense or explosives are prohibited, except that a gelled alcohol food warming fuel used for food preparation or warming, whether catered or not, is allowed provided that it is in:

(a) a one ounce capacity container (29.6 ml) on a noncombustible surface; or

(b) a container on a noncombustible surface, not exceeding one quart (946.6 ml) capacity with a controlled pouring device that will limit the flow to a one ounce (29.6 ml) serving.

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

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

(c) If a space heater is approved by the managing agency, the space heater shall:

(i) not exceed 900 watts at its highest setting;

(ii) be equipped with a self-limiting element temperature setting for the ceramic elements;

(iii) have a tip-over safety device;

(iv) be equipped with a built-in timer not to exceed eight hours per setting;

(v) be equipped with a programmable thermostat; and

(vi) be equipped with an overheat protection feature.

(d) Notwithstanding any other provision of this Rule, if the space heater is to be placed in a facility leased by the State through the Division, the placement must also be approved by the Real Estate Section of the Division.

(6) For Personal appliances, other than space heaters regulated under Rule R23-19-4(5) above, the following applies:

(a) Personal appliances are prohibited in a private office or cubical but are allowed in break areas.

(b) "Personal appliances" for purposes of this Rule include, but are not limited to: coffee makers, refrigerators, air conditioners, food warmers, hot plates, microwaves, waffle makers, toasters and toaster ovens.

(c) "Personal appliances" for purposes of this Rule does not include personal fans, which are allowed.

(d) Any person with a medical related condition may obtain approval by the managing agency to use a personal appliance that would otherwise be prohibited, if the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires the use of the personal appliance in the employee's private office or cubicle.

(7) No displays, including but not limited to signs, shall be affixed to state facilities and grounds.

(8) User shall not sublet any part of the premises or transfer or assign the premises or change the purpose of the permitted activity without the written consent of the state.

(9) Alteration and damage to a state facilities and grounds including grass, shrubs, trees, paving or concrete, is prohibited.

(10) All costs to repair any damage or replace any

destruction, regardless of the amount or cost of restoration or refurbishing shall be at the expense of the persons(s) responsible for such damage or destruction.

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

(12) Littering is prohibited.

(13) Decorations.

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

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

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

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

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

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

(g) Users may not decorate the outside of any facility or any portion of the grounds.

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

(14) Live cut trees. Any live cut trees placed inside a building must be treated with fire retardant as approved by the facility manager.

(15) The following applies to artificial trees:

(a) Artificial trees shall be listed flame retardant by an independently nationally recognized laboratory with evidence of the listing available to the facility manager.

(16) The facility manager has the right to deem a tree unsafe and request that agency to remove the tree immediately if these rules are not strictly followed.

(17) All electrical decorations, including but not limited to those on trees, shall be UL listed in good condition without frayed wiring, loose connections or broken sockets. They must be used according to the manufacturers' recommendations. The electrical connection, including cabling must be approved in advance by the facility manager. Any electrical decorations must be turned off at the end of the business day for each particular agency.

(18) Set up/Clean up.

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

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

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

(19) Parking. There must be compliance with the written parking requirements adopted by the Managing Agency.

(20) Compliance with Laws.

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

(b) Safety requirements as used in this rule include safety and security requirements made known to the Managing Agency

by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Section 26-38 et seq. shall be observed.

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

(21) Security and Supervision at Events.

(a) The Managing Agency may adopt written policies regarding security requirements for events, which must be followed.

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

(22) Photography, Portraits and Video/Filming.

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

(b) This Subsection (16) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(23) Commercial, Private and Community Service Activities. A Managing Agency may determine through its written policies to categorically not allow any commercial, private and/or community service activities. However, if commercial or private activities are allowed, then community service activities shall be allowed subject to all the requirements of this rule and a facility use permit.

(24) Liability.

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

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

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

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

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

R23-19-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.

(1) Within ten (10) working days of receipt of a completed application, the Managing Agency shall issue a Facility Use Permit or notice of denial of the application.

(2) The Managing Agency may deny an application if:

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

(b) The event would conflict or interfere with a state

sponsored activity, a time or place reserved for freedom of speech activities, the operation of state business, or a legislative session; and/or

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

(3) The Managing Agency may place conditions on the approval that alleviates such concerns.

(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may request a reconsideration of the Managing Agency's determination by delivering the written request for reconsideration and reasons for the disagreement to the Managing Agency within five (5) working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten (10) days after the Managing Agency receives the written request for reconsideration, the Managing Agency may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the Managing Agency's reconsideration determination, the applicant may appeal the matter, in writing, within ten (10) calendar days to the Executive Director of the Department of Administrative Services who will determine the process of the appeal.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the Managing Agency.

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

(a) The Managing Agency may revoke any issued permit if this rule R23-19, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The permittee may cancel the permit and receive a refund of fees, less any incurred costs to the state or managing agency, and any deposits if written notice of cancellation is received by the Managing Agency at least 48 hours prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

R23-19-6. Commercial Solicitation Policy.

(1) In general, commercial solicitation is prohibited.

(2) Nothing in this rule shall be interpreted as to infringe upon anyone's constitutional right of freedom of speech and freedom of association.

(3) In addition to the definitions in R23-19-3 above, the following definitions shall also apply to this Rule R23-19-6:

(a) "Commercial Solicitation(s)" means any commercial activity conducted for the purpose of advertising, promoting, fund-raising, buying or selling any product or service, encouraging membership in any group, association or organization, or the marketing of commercial activities by distributing handbills, leaflets, circulars, advertising or dispersing printed materials for commercial purposes.

(b) "Commercial Solicitation" for the purpose of this rule does not include free speech activities as defined in rule R23-20, Utah Administrative Code.

(c) "Commercial Solicitation" for the purpose of this rule does not include filming or photographic activities, but such activities shall be subject to rule R23-19 et seq.

(d) "Commercial Solicitation" for the purpose of this rule does not include solicitation by the state or federal government; solicitation related to the business of the state, solicitation related to the procurement responsibilities of the state, solicitation allowed as a matter of right under applicable federal or state law; or solicitation made pursuant to a contract or lease with the state.

(4) Commercial Solicitation Allowed under a Facility Use Permit.

(a) Commercial solicitation, not prohibited by R23-19-6(5) below, may be allowed in conjunction with the issuance of a facility use permit under rule R23-19 and such commercial solicitation must comply with the facility use rules of R23-19-1 et seq.

(b) All materials allowed shall be displayed only on bulletin boards or in areas that have been approved in advance by the Managing Agency.

(c) The issuance of a facility use permit shall not be construed as state endorsement of the solicitor's product, service, charity or event.

(d) Soliciting activities are subject to all littering laws and regulations.

(5) Prohibited Commercial Solicitation. The following commercial solicitation activities are prohibited and no facility use permit shall be issued for such:

(a) Door-to-door commercial solicitation of items, services or donations.

(b) Commercial solicitation to persons in vehicles or by leaving any commercial solicitation materials on vehicles or parking lots.

(c) Any sale of food or beverage products that would be in any violation of any contract entered into by the State or the Managing Agency.

R23-19-7. Waivers.

(1) The Managing Agency may waive, in writing, the requirements of any provision of this Rule R23-19 upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Conditions may be placed on any approved waiver to assure the appropriate protection of facilities, grounds and person. An appeal of a denial of a request for such waiver may be filed and processed similarly to the denial of a Facility Use Permit as described in R23-19-5.

(2) Costs and fees shall be waived for state sponsored activities. However, state agencies will be required to pay the costs and fees identified in the Schedule of Costs and Fees when the activity is not required for the conducting of state business, such as after-hour social events, employee recognition events, and holiday parties. Costs and fees will not be waived for commercial, private and commercial solicitation activities.

(3) Notwithstanding the waiver provisions of this rule, the following may not be waived by the Managing Agency: R23-19-4(2), (4), (5) (8), (9), (10), (11), (15), (16), (18), (19), (20) and (21) as well as R23-19-6.

R23-19-8. Political Signs.

Political signs, except for hand-carried signs during permitted events under a Facility Use Permit, are prohibited on all State of Utah owned properties except as allowed under a Freedom of Speech Activity or as protected under the State of Utah or United States Constitutions.

Rule R23-19-8(1) shall not apply to Utah Department of Transportation right-of-ways, properties of the State and Institutional Trust Lands Administration or properties of Higher Education, any of which may have its own laws or rules applicable to political signs.

KEY: public buildings, facilities use, space heaters

August 7, 2014

63A-5-103

Notice of Continuation May 3, 2012

63A-5-204

R23. Administrative Services, Facilities Construction and Management.**R23-22. General Procedures for Acquisition and Selling of Real Property.****R23-22-1. Purpose.**

This rule defines the procedures of the Division of Facilities Construction and Management for acquisition and selling of real property.

R23-22-2. Authority.

(1) This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management (hereinafter referred to as "DFCM"). All actions under this rule that refer to the DFCM shall be undertaken by the Director of DFCM or the Director's duly authorized designee.

(2) This rule is also authorized and intended to implement the requirements of Section 63A-5-401, as well as Subsection 63A-5-103(1)(e)(iii).

R23-22-3. Policy.

It is the general policy of the Board that, except as otherwise allowed by the Utah Code, the DFCM shall buy, sell or exchange real property in accordance with this Rule to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale or exchange.

R23-22-4. Scope of This Rule.

(1) This Rule shall apply to all purchases, sales, donations and exchanges of DFCM except as otherwise allowed by the Utah Code. The requirements of this Rule shall also not apply to a contract or other written agreement prior to May 5, 2008.

(2) This Rule contains a waiver provision in Rule R23-22-8 that is consistent with Section 63A-5-401.

(3) Nothing in the rule shall prohibit DFCM from proceeding with easements, lot line and other minor, incidental adjustments with other State entities or other public/private persons or entities, as long as DFCM reasonably determines that such property is not historically significant after consultation with the State Historic Preservation Officer, that the transaction is in the public interest, and that the value of the transaction, as reasonably determined by DFCM, is less than \$100,000.

R23-22-5. Requirements for Purchase, Accepting a Donation, or Exchanges of Real Property.

Unless waived under Rule R23-22-8, DFCM shall comply with the following in regard to the purchase, accepting a donation, or exchange of real property that is subject to this Rule:

(1) Selection Process. In accordance with State law, DFCM shall either perform the selection process or assist the state agency with the selection process. The selection process must comply with applicable State laws and rules.

(2) Financing Requirements. As authorized by the Utah Legislature, DFCM shall assist, as appropriate with financing requirements, including, but not limited to, coordinating financing requirements through the State Building Ownership Authority, or other authorized bonding authority.

(3) Document Preparation and Approvals.

In accordance with State law, DFCM shall negotiate, draft and execute the applicable Real Estate Contract and transaction documents with due consideration to the State agency's comments. The State agency may be required by DFCM to be a signatory to the Contract. Legal documents shall either be on a form approved by the Utah Attorney General or submitted for approval to the Utah Attorney General. The same requirements shall apply to closing documents prepared by the title company.

(4) Substantive Requirements. Unless a provision below

is waived under Rule R23-22-8, DFCM shall obtain and review the following:

(a) Title Insurance. DFCM shall obtain an Owner's Policy of Title Insurance for real property with an estimated value by DFCM at \$200,000 or above. For real property with an estimated value by DFCM of less than \$200,000, DFCM shall obtain a title report and may obtain an Owner's Policy of Title Insurance if, in the judgment of DFCM, title insurance is advantageous to the State.

(b) Environmental Assessment. A Phase I environmental Assessment or higher level environmental assessment is required.

(c) Engineering Assessment. DFCM shall obtain an engineering assessment of mechanical systems and structural integrity of improvements located on the property.

(d) Code Review. DFCM shall review the real property to ascertain its suitability under all applicable codes, laws, regulations and requirements.

(e) Appraisal. Except for transactions where State law does not require a certain value to be established, the value used by DFCM in the negotiation shall be based upon an appraisal completed by an appraiser that is a state-certified general appraiser under Section 61-2B-2 and a State of Utah licensed MAI appraiser.

(f) Maintenance and Operation History. DFCM shall obtain, if reasonably available, an analysis of past maintenance and operational expenses.

(g) Land Use Information. DFCM shall obtain, if reasonably available, the plat map, zoning and planning information.

(h) Survey. DFCM shall obtain an ALTA/ACSM Land Title Survey, current revision, of the subject property. An ALTA survey shall not be required if an ALTA survey has already been performed within the past 12 months unless otherwise determined by DFCM;

(i) Historic Assessment. DFCM shall undertake an historic property assessment under Section 9-8-404; and

(j) Other. DFCM shall also comply with other requirements determined necessary by law, rule, regulation or by DFCM.

R23-22-6. Determination of Surplus Real Property.

(1) In accordance with State law, DFCM may recommend that certain real property be declared as surplus.

(2) If DFCM estimates that the value of the real property is less than \$100,000, then DFCM need only notify the Executive Director of the Department of Administrative Services prior to any declaration of surplus or disposition of the real property. DFCM shall also consult with the State Historic Preservation Office prior to any such declaration or disposition if the property is historically significant.

(3) If DFCM estimates that the value of the real property is \$100,000 or more, then the DFCM shall notify the Director of the Department of Administrative Services as well as the staff of the Building Board, as well as receive approval from the Building Board prior to any declaration of surplus or disposition of the real property. The Utah State Building may declare the property surplus after considering the following:

(a) the recommendation and any comments by the Division;

(b) the input from state agencies and institutions, including, but not limited to, whether any state agency or institution has a need for the subject property;

(c) any input from concerned persons or entities;

(d) the appraised value of the property; and

(e) whether the property is historically significant. The property shall be considered historically significant if the real property, structures, statues or other improvements on the real property, is listed on the National Register of Historic Places or

the State Register, or if the Board determines that it is historically significant after considering input from the State Historic Preservation Officer and others that have relevant input at the Board meeting.

(4) If the Utah Legislature directs that the DFCM sell the property, then it shall be deemed as declared surplus under this Rule without the need for any Board approval.

R23-22-7 Detailed Disposition Procedures.

After the appropriate determination is made that the real property is surplus, DFCM shall endeavor to sell the surplus real property on the open market, unless such property is to be conveyed to another State agency or public entity in accordance with applicable law. The sale shall be processed as follows:

(1) Approvals. DFCM shall confirm that all necessary approvals have been sought for the declaration of surplus property.

(2) Appraisal. Except for transaction where State law does not require a certain value be established or when the Director of DFCM estimates that the value of the property is less than \$100,000, the value used by DFCM in the sale shall be based upon an appraisal completed by an appraiser that is a State of Utah certified general appraiser under Title 61, Chapter 2g, of the Utah Code and is a State of Utah licensed MAI appraiser.

(3) Listing Price. DFCM shall establish a listing price based on the appraisal or, if no appraisal is required, based upon DFCM's knowledge of prevailing market conditions and other circumstances customarily used in the industry for such sales.

(4) Advertise. DFCM shall advertise the property for sale in such a manner that is commercially reasonable in the discretion of the DFCM. DFCM may set a time deadline for the submission of bids.

(5) Award of Contract. DFCM shall endeavor to enter into a contract with the bidder that provides the best value to the State of Utah taking into account the price, other terms and factors related to the sale. If the contract is with a person that does not have the highest bidding price, then DFCM shall file a written justification statement describing the circumstances in which the selected bidder represents the best value to the State of Utah.

(6) Document Preparation and Approvals. In accordance with State law, DFCM shall negotiate, draft and execute the applicable Real Estate Contract or transaction documents with due consideration to the State agency's comments. The State agency may be required by DFCM to be a signatory to the Contract. Legal documents shall either be on a form approved by the Utah Attorney General or submitted for approval to the Utah Attorney General. The same requirements shall apply to closing documents prepared by the title company.

R23-22-8. Waiver for Requirements, Other Than R23-22-6.

(1) The requirements under Rule R23-22-6 may not be waived.

(2) To the extent allowed by law, any provision of this Rule R23-22, other than Rule R23-22-6, may be waived by the DFCM Director when the adherence to the provision of the rule is not economically efficient or other special circumstances are documented which indicate that the enforcement of the rule would not be in the public interest.

KEY: procedures, selling, surplus, real property

August 7, 2014 63A-5-103
Notice of Continuation February 20, 2013 63A-5-401

R23. Administrative Services, Facilities Construction and Management.**R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.****R23-23-1. Purpose.**

The purpose of this rule is to comply with the provisions of Section 63A-5-205.

R23-23-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

R23-23-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63A-5-205.

(2) In addition:

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

(b) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.

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

(d) "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 60 days from the date of hire.

(e) "State" means the State of Utah.

R23-23-4. Applicability of Rule.

(1) Except as provided in Subsection R23-23-4(2) below, this Rule R23-23 applies to all design or construction contracts entered into by the Division or 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 is in the amount of \$750,000 or greater.

(2) This Rule R23-23 does not apply if:

(a) the application of this Rule R23-23 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 R23-23 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 R23-23-4(1).

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

R23-23-5. Contractor to Comply with Section 63A-5-205.

All contractors and subcontractors that are subject to the requirements of Section 63A-5-205 shall comply with all the requirements, penalties and liabilities of Section 63A-5-205.

R23-23-6. 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 or Section 63A-5-205:

(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 6a, Utah Procurement Code; 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.

R23-23-7. 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 63A-5-205.

(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 Division) that is subject to the requirements of this Rule no later than the time the contract is entered into or renewed:

(a) demonstrate compliance by a written certification to the 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 employee's 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 is subject to the requirements of this Rule.

(2) Recertification. The 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 (10) 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 63A-5-205(1)(e) and defined in Section 26-40-115 is met by the contractor if the contractor provides the 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 R23-23-7(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://dfem.utah.gov/downlads/1const/Health_Insurance_Benchmark.pdf.

(4) The health insurance must be available upon the first day of the calendar month following sixty (60) days from the date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to this Rule must demonstrate compliance with this Rule in any annual submittal under Section 63G-6-702. 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 this Rule.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to this Rule must demonstrate compliance with this Rule 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 this Rule.

(7) Notwithstanding any prequalification process, any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule conducted by the Board or the Division shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of this Rule R23-23, 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-6a-904 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the 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 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 R23-23-7(8)(c)(i) as provided in Subsection 63A-5-205(3)(g)(ii).

R23-23-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in this Rule shall be construed as to create any contractual relationship whatsoever between the State of Utah, the Board, or the Division with any subcontractor or subconsultant at any tier.

KEY: health insurance, contractors, contracts, contract requirements

August 7, 2014

Notice of Continuation June 10, 2014

63A-5-103(1)(e)

63A-5-205

R25. Administrative Services, Finance.**R25-11. Utah Transparency Advisory Board, Procedures for Electronic Meetings.****R25-11-1. Purpose and Authority.**

(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 Utah Transparency Advisory Board meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-207, 63G-3-201, and 63A-3-404

R25-11-2. Meeting Procedure.

(1) Procedure. The following provisions govern any meeting at which one or more board members appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the board may participate in any meeting electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notices shall specify the anchor location where the members of the board who are 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) In accordance with Utah Code Section 52-4-202 and Section 52-4-207, notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided at least 24 hours before the meetings on the Public Notice Website and to at least one newspaper of general circulation within the state or to a local media correspondent.

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

(d) When notice is given of the possibility of a board member(s) appearing electronically or telephonically, any member(s) 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 board. At the commencement of the meeting, or at such time as any member 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 board 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 in the State Capitol Building, room 415, 350 North State Street, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: electronic meetings, Utah Transparency Advisory Board**August 21, 2014**

52-4-207

63G-3-201

63A-3-404

R105. Attorney General, Administration.

R105-2. Records Access and Management.

R105-2-1. Purpose.

This rule provides information about submitting requests and appeals to the Attorney General's Office under the Government Records Access and Management Act.

R105-2-2. Requests for Access.

All requests for records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Coordinator
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
Salt Lake City, Utah 84114

(If by mail)

GRAMA Coordinator
Office of the Attorney General
PO Box 140860
Salt Lake City, Utah 84114-0860

(If by email)

GRAMA Coordinator
grama_coordinator@utah.gov

R105-2-3. Appeals.

Appeals regarding questions of access to records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Appeal
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
Salt Lake City UT 84114
(If by mail)

GRAMA Appeal
Office of the Attorney General
PO Box 140860
Salt Lake City, Utah 84114-0860

(If by email)

GRAMA Coordinator
grama_coordinator@utah.gov

R105-2-4. Records of Client Agencies.

Requesters seeking copies of records of client agencies of the Attorney General's Office must make their request directly to the client agency. See 67-5-15(1).

R105-2-5. Record Sharing.

For the purpose of record sharing between governmental entities as provided in 63G-2-206, the Attorney General's Office is one governmental entity and all divisions in the office are part of that entity.

KEY: public records, government documents, records access, GRAMA

October 25, 2011

63-2-204

Notice of Continuation November 7, 2011

63-2-904

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

R156-1-101. Title.

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

R156-1-102. Definitions.

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

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

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license:

(a) issued to a licensee in error, such as where a license is issued to an applicant;

(i) whose payment of the required application fee is dishonored when presented for payment;

(ii) who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards;

(iii) who has been issued the wrong classification of licensure; or

(iv) due to any other error in issuing a license; or

(b) not issued erroneously, but where subsequently the licensee fails to maintain the ongoing qualifications for licensure, when such failure is not otherwise defined as unprofessional or unlawful conduct.

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

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

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

(b) "Disciplinary action", as used in Subsection 58-1-

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

(7) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

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

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

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

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

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

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

(a) Mitigating circumstances include:

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

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

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

(iv) full and free disclosure to the client or Division prior

to the discovery of any misconduct;

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

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

(vii) remorse.

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

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

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

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

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

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

(4) Levels of supervision are defined as follows:

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

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

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

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

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

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

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

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

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

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

R156-1-103. Authority - Purpose.

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

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

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

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

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

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

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

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

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

(i) a national, state or local emergency;

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

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

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

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

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

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

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

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

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

R156-1-109. Presiding Officers.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Uniform Building Code Commission. The Uniform

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

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

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

(a) Commission.

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

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

(A) informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m), (o), (p), and (q), and R156-46b-202(2)(b)(i), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements;

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

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

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

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

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

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not

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

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

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

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

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

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

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

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

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

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

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

R156-1-110. Issuance of Investigative Subpoenas.

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

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

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

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

(3)(a) Service may be made:

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

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

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

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

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

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

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

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

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

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

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

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

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

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

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

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

(5) If a peer or advisory committee member fails or refuses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R156-1-302. Consideration of Good Moral Character,

Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

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

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

R156-1-303. Temporary Licenses in Declared Disaster or Emergency.

(1) In accordance with Section 53-2a-1203, persons who provide services under this exemption from licensure, shall within 30 days file a notice with the Division as provided under Subsection 53-2a-1205(1) using forms posted on the Division internet site.

(2) In accordance with Section 53-2a-1205 and Subsection 58-1-303(1), a person who provides services under the exemption from licensure as provided in Section 53-2a-1203 for a declared disaster or emergency shall, after the disaster period ends and before continuing to provide services, meet all the normal requirements for occupational or professional licensure under this title, unless:

- (a) prior to practicing after the declared disaster the person is issued a temporary license under the provisions of Subsection 58-1-303(1)(c); or
- (b) the person qualifies under another exemption from licensure.

R156-1-305. Inactive Licensure.

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

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

- (a) advanced practice registered nurse;

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

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

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

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

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

(7) An inactive licensee whose license is activated during

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

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

R156-1-308a. Renewal Dates.

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

(a) Acupuncturist	May 31	even years
(b) Advanced Practice Registered Nurse	January 31	even years
(c) Advanced Practice Registered Nurse-CRNA	January 31	even years
(d) Architect	May 31	even years
(e) Athlete Agent	September 30	even years
(f) Athletic Trainer	May 31	odd years
(g) Audiologist	May 31	odd years
(h) Barber	September 30	odd years
(i) Barber School	September 30	odd years
(j) Building Inspector	November 30	odd years
(k) Burglar Alarm Security	March 31	odd years
(l) C.P.-A. Firm	September 30	even years
(m) Certified Court Reporter	May 31	even years
(n) Certified Dietitian	September 30	even years
(o) Certified Medical Language Interpreter	March 31	odd years
(p) Certified Nurse Midwife	January 31	even years
(q) Certified Public Accountant	September 30	even years
(r) Certified Social Worker	September 30	even years
(s) Chiropractic Physician	May 31	even years
(t) Clinical Mental Health Counselor	September 30	even years
(u) Clinical Social Worker	September 30	even years
(v) Construction Trades Instructor	November 30	odd years
(w) Contractor	November 30	odd years
(x) Controlled Substance License	Attached to primary license renewal	
(y) Controlled Substance Precursor	May 31	odd years
(z) Controlled Substance Handler	September 30	odd years
(aa) Cosmetologist/Barber	September 30	odd years
(bb) Cosmetology/Barber School	September 30	odd years
(cc) Deception Detection	November 30	even years
(dd) Dental Hygienist	May 31	even years
(ee) Dentist	May 31	even years
(ff) Direct-entry Midwife	September 30	odd years
(gg) Dispensing Medical Practitioner	September 30	odd years
(hh) Dispensing Medical Practitioner Clinic Pharmacy	September 30	odd years
(ii) Electrician	November 30	even years
(jj) Electrologist	September 30	odd years
(kk) Electrology School	September 30	odd years
(ll) Elevator Mechanic	November 30	even years
(mm) Environmental Health Scientist	May 31	odd years
(nn) Esthetician	September 30	odd years
(oo) Esthetics School	September 30	odd years
(pp) Factory Built Housing Dealer	September 30	even years
(qq) Funeral Service Director	May 31	even years
(rr) Funeral Service Establishment	May 31	even years
(ss) Genetic Counselor	September 30	even years
(tt) Health Facility Administrator	May 31	odd years
(uu) Hearing Instrument Specialist	September 30	even years
(vv) Internet Facilitator	September 30	odd years
(ww) Landscape Architect	May 31	even years
(xx) Licensed Advanced Substance Use Disorder Counselor	May 31	odd years

(yy) Licensed Practical Nurse	January 31	even years
(zz) Licensed Substance Use Disorder Counselor	May 31	odd years
(aaa) Marriage and Family Therapist	September 30	even years
(bbb) Massage Apprentice, Therapist	May 31	odd years
(ccc) Master Esthetician	September 30	odd years
(ddd) Medication Aide Certified	March 31	odd years
(eee) Music Therapist	March 31	odd years
(fff) Nail Technologist	September 30	odd years
(ggg) Nail Technology School	September 30	odd years
(hhh) Naturopath/Naturopathic Physician	May 31	even years
(iii) Occupational Therapist	May 31	odd years
(jjj) Occupational Therapy Assistant	May 31	odd years
(kkk) Optometrist	September 30	even years
(lll) Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
(mmm) Outfitter/Hunting Guide	May 31	even years
(nnn) Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
(ooo) Pharmacist	September 30	odd years
(ppp) Pharmacy Technician	September 30	odd years
(qqq) Physical Therapist	May 31	odd years
(rrr) Physical Therapist Assistant	May 31	odd years
(sss) Physician Assistant	May 31	even years
(ttt) Physician and Surgeon, Online Prescriber	January 31	even years
(uuu) Plumber	November 30	even years
(vvv) Podiatric Physician	September 30	even years
(www) Pre Need Funeral Arrangement Sales Agent	May 31	even years
(xxx) Private Probation Provider	May 31	odd years
(yyy) Professional Engineer	March 31	odd years
(zzz) Professional Geologist	March 31	odd years
(aaaa) Professional Land Surveyor	March 31	odd years
(bbbb) Professional Structural Engineer	March 31	odd years
(cccc) Psychologist	September 30	even years
(dddd) Radiologic Technologist, Radiology Practical Technician	May 31	odd years
(eeee) Radiologist Assistant	May 31	odd years
(ffff) Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
(gggg) Registered Nurse	January 31	odd years
(hhhh) Respiratory Care Practitioner	September 30	even years
(iiii) Security Personnel	November 30	even years
(jjjj) Social Service Worker	September 30	even years
(kkkk) Speech-Language Pathologist	May 31	odd years
(llll) Veterinarian	September 30	even years
(lllll) Vocational Rehabilitation Counselor	March 31	odd years

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

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

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

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be

extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

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

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

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

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

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

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

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

(k) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

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

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

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

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

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

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

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

The procedures for renewal of licensure shall be as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;
- (2) pay the established license renewal fee and the reinstatement fee;
- (3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and
- (4) pay any fines or citations owed to the Division prior to the expiration of license.

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

An applicant for relicensure following revocation of licensure shall:

- (1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;
- (2) pay the established license fee for a new applicant for licensure; and
- (3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

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

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

- (1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.
- (2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:
 - (a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;
 - (b) pay the established license fee for a new applicant for licensure;
 - (c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;
 - (d) pay any fines or citations owed to the Division prior to the surrender of license.

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

Except as otherwise governed by the terms of an order

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

R156-1-310. Cheating on Examinations.

(1) Policy.

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

(2) Cheating Defined.

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

- (a) communication between examinees inside of the examination room or facility during the course of the examination;
- (b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;
- (c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;
- (d) permitting anyone to copy answers to the examination;
- (e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;
- (f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;
- (g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

- (a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;
- (b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or
- (c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the

examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

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

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

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

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

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

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

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

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

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

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

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

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

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

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

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

R156-1-404d. Diversion - Procedures.

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

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

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the Division shall prepare and serve upon the licensee a proposed diversion

agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

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

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

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

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

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

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

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

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

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

(4) practicing a regulated occupation or profession in,

through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

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

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

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference; or

(8) violating any term, condition, or requirement contained in a "diversion agreement", as defined in Subsection 58-1-404(6)(a).

R156-1-502. Administrative Penalties.

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

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Fine
58-1-501(1)(a)	\$ 500.00
58-1-501(1)(c)	\$ 800.00
58-1-501(2)(o)	\$ 0 - \$250.00

SECOND OFFENSE

58-1-501(1)(a)	\$1,000.00
58-1-501(1)(c)	\$1,600.00
58-1-501(2)(o)	\$251.00 - \$500.00

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor or chief investigator may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-1-503. Reporting Disciplinary Action.

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

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

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

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

KEY: diversion programs, licensing, supervision, evidentiary restrictions

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58-1-106(1)(a)

58-1-308

58-1-501(2)

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

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

R156-17b-102. Definitions.

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

- (1) "Accredited by ASHP" means a program that:
 - (a) was accredited by the ASHP on the day on which the applicant for licensure completed the program; or
 - (b) was in ASHP candidate status on the day on which the applicant for licensure completed the program.
- (2) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.
- (3) "Analytical laboratory":
 - (a) means a facility in possession of prescription drugs for the purpose of analysis; and
 - (b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.
- (4) "ASHP" means the American Society of Health System Pharmacists.
- (5) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.
- (6) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.
- (7) "Centralized Prescription Filling" means the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order.
- (8) "Centralized Prescription Processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review (DUR), claims adjudication, refill authorizations, and therapeutic interventions.
- (9) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.
- (10) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.
- (11) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.
- (12) "Counterfeit prescription drug" has the meaning given

that term in 21 USC 321(g)(2), including any amendments thereto.

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

(14) "Dispense", as defined in Subsection 58-17b-102(22), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

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

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

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

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

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

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

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

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

(a) can withstand repeated use;

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

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

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

(e) may include devices and medical supplies.

(20) "Entities under common administrative control" means an entity holds the power, actual as well as legal to influence the management, direction, or functioning of a business or organization.

(21) "Entities under common ownership" means entity assets are held indivisibly rather than in the names of individual members.

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

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

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

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

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

prescription drugs, and where:

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

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

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

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

(a) "Caution: federal law prohibits dispensing without prescription";

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

(c) "Rx only".

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

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

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

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

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

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

(34) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (16), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

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

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

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

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

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

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

(35) "Other health care facilities" means any entity as defined in Utah Code Subsection 26-21-2(13)(a) or Utah Administrative Code R432-1-3(55).

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

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

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

(39) "Prepackaged" or "Prepackaging" means the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment in which the prepackaging occurred.

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

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

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

(43) "Refill" means to fill again.

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

(45) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

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

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

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

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

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

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

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

(53) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 37-NF 32), 2014 edition, which is official from May 1, 2014 through Supplement 1, dated August 1, 2014, which is hereby adopted and incorporated by reference.

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

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

- (a) intracompany sales or transfers;
- (b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;
- (c) the sale, purchase, or trade of a drug pursuant to a prescription;
- (d) the distribution of drug samples;
- (e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;
- (f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;
- (g) the sale, purchase or exchange of blood or blood components for transfusions;
- (h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;
- (i) delivery of a prescription drug by a common carrier; or
- (j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-103. Authority - Purpose.

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

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

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

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

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

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

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

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

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

days of any email address change. Only one email address shall be used for each pharmacy.

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

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

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

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

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

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

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

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

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

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

and

- (e) medical gas provider.

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

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

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

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

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

(2) In accordance with Subsection 58-17b-304(7), an

applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

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

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

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

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician shall complete a training program that is:

(a) accredited by ASHP; or

(b) conducted by:

(i) the National Pharmacy Technician Association;

(ii) Pharmacy Technicians University; or

(iii) a branch of the Armed Forces of the United States,

and

(c) meets the following standards:

(i) completion of at least 180 hours of directly supervised practical training in a licensed pharmacy as determined appropriate by a licensed pharmacist in good standing; and

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

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

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

(4) An individual shall complete a pharmacy technician training program and successfully pass the required examinations as listed in Subsection R156-17b-303c(4) within two years from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(a) An individual who fails to apply for and obtain a pharmacy technician license within the two-year time frame or within six months after completion of a pharmacy technician training program, whichever comes first:

(i) is no longer eligible for employment as a technician-in-training and shall work in the pharmacy only as supportive personnel; and

(ii) shall repeat a pharmacy technician training program in its entirety if the individual pursues licensure as a pharmacy technician.

(5)(a) Pharmacy technician training programs that received Division approval on or before April 30, 2014 are exempt from satisfying standards established in Subsection R156-17b-303a(3) for students enrolled on or before December 31, 2018.

(b) A student in a program described in Subsection (5)(a) shall comply with the program completion deadline and testing requirements in Subsection (4), except that the license application shall be submitted to the Division no later than December 31, 2021.

(c) A program in ASHP candidate status shall notify a student prior to enrollment that if the program is denied accreditation status while the student is enrolled in the program, the student will be required to complete education in another program with no assurance of how many credits will transfer to the new program.

(d) A program in ASHP candidate status that is denied accreditation shall immediately notify the Division, enrolled students and student practice sites, of the denial. The notice shall instruct each student and practice site that:

(i) the program no longer satisfies the pharmacy technician license education requirement in the State of Utah; and

(ii) enrollment in a different program meeting requirements established in Subsection R156-17b-303a(3) is

necessary for the student to complete training and to satisfy the pharmacy technician license education requirement in the State of Utah.

(6) An applicant for licensure as a pharmacy technician is deemed to have met the qualifications for licensure in Subsection 58-17b-305(1)(f) and 58-17b-305(1)(g) if the applicant:

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

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

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

R156-17b-303b. Licensure - Pharmacist - Pharmacy Internship Standards.

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

(a) For graduates of all U.S. pharmacy schools:

(i) At least 1,740 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both according to the Accreditation Council for Pharmacy Education (ACPE), Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree Guidelines Version 2.0 Effective February 14, 2011, which is hereby incorporated by reference.

(ii) Introductory pharmacy practice experiences (IPPE) shall account for not less than 300 hours over the first three professional years.

(iii) A minimum of 150 hours shall be balanced between community pharmacy and institutional health system settings.

(iv) Advanced pharmacy practice experiences (APPE) shall include at least 1,440 hours (i.e., 36 weeks) during the last academic year and after all IPPE requirements are completed.

(v) Required experiences shall:

(A) include primary, acute, chronic, and preventive care among patients of all ages; and

(B) develop pharmacist-delivered patient care competencies in the community pharmacy, hospital or health-system pharmacy, ambulatory care, inpatient/acute care, and general medicine settings.

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

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

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

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

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

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

(b) For graduates of all foreign pharmacy schools, at least 1,440 hours of supervised pharmacy practice in the United States.

R156-17b-303c. Qualifications for Licensure -

Examinations.

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

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

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

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

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

(4) Applicants taking the NAPLEX or MPJE examination shall pass the exams within six months from the date of the Division's approval for the applicant to take the exam. If the applicant does not pass the required exam within six months, the pending license application shall be denied.

(5) In accordance with Subsection 58-17b-305(1)(g), an applicant applying for licensure as a pharmacy technician shall pass the PTCB or ExCPT with a passing score as established by the certifying body. The certificate shall exhibit a valid date and that the certification is active.

(6) A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

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

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

R156-17b-304. Temporary Licensure.

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

(a) is a graduate of an ACPE accredited pharmacy school within two months immediately preceding application for licensure or enrolled in the second year of a pharmacy graduate residency program;

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

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

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

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

(a) six months from the date of issuance;

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

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

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

authorization to retest.

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

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

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

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

(a) lawfully practiced as a licensed pharmacist a minimum of 2,000 hours in the four years immediately preceding application in Utah;

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

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

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

(1) An applicant for licensure as a pharmacy shall document to the satisfaction of the Division the owners and management of the pharmacy and the facility in which the pharmacy is located.

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

(a) the PIC;

(b) the PIC's immediate supervisor;

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

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

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

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

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

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

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

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

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

R156-17b-309. Continuing Education.

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

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

- (a) 30 hours for a pharmacist; and
- (b) 20 hours for a pharmacy technician.

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

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

(a) for pharmacists:

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

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

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

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

(b) for pharmacy technicians:

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

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

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

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

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

(a) Pharmacists:

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

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

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

(b) Pharmacy Technicians:

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

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

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

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after the close

of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

R156-17b-310. Exemption from Licensure - Dispensing of Cosmetic, Injectable Weight Loss, or Cancer Drug Treatment Regimen Drugs.

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

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

(3) A cancer drug treatment regimen that can be dispensed by a prescribing practitioner or an individual employed by the prescribing practitioner in accordance with Subsection 58-17b-309.5(1) and (2) means a prescription drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient.

(a) A prescribing practitioner who chooses to dispense prescription medications shall disclose to the patient that the cancer drug treatment regimen may be obtained from a pharmacy unaffiliated with the prescribing practitioner and offer to the patient the opportunity to consult with a pharmacist of the patient's choosing if the patient desires patient counseling.

(b) Practitioners are required to document this interaction by keeping a signature log of all patients who have received this written information. These records are required to be kept for a period of five years and shall be readily available for inspection.

(4) A prescribing practitioner who chooses to dispense prescription medications shall meet the standards set forth in R156-17b-603 through R156-17b-605 and R156-17b-609 through R156-17b-611; however, a prescribing practitioner is not required to employ a pharmacist in charge.

(5) In accordance with Subsections 58-17b-309(4)(c) and 58-17b-309.5(2)(b)(viii), a prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient to the prescribing practitioner's or optometrist's patients shall have a label securely affixed to the container indicating the following minimum information:

(a) the name, address and telephone number of the prescribing practitioner or optometrist prescribing and dispensing the drug;

(b) the serial number of the prescription as assigned by the dispensing prescribing practitioner or optometrist;

(c) the filling date of the prescription or its last dispensing date;

(d) the name of the patient;

(e) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;

(f) the trade, generic or chemical name, amount dispensed and the strength of dosage form; and

(g) the beyond use date.

(6) A prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient shall keep inventory records for each drug dispensed pursuant to R156-17b-605 and a prescription dispensing medication profile for each patient

receiving a drug dispensed by the prescribing practitioner or optometrist pursuant to R156-17b-609. Those records shall be made available to the Division upon request by the Division.

(a) The general requirements for an inventory of drugs dispensed by a prescribing practitioner, the prescribing practitioner's employee, or optometrist include:

(i) the prescribing practitioner or optometrist shall be responsible for taking all required inventories, but may delegate the performance of taking the inventory to another person;

(ii) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(iii) the inventory records shall be filed separately from all other records;

(iv) the person taking the inventory and the prescribing practitioner or optometrist shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the prescribing practitioner or optometrist and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(v) the initial inventory shall be completed within three working days of the date on which the prescribing practitioner or optometrist begins to dispense a drug under Sections 58-17b-309 and 58-17b-309.5; and

(vi) the annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs.

(b) A prescription dispensing medication profile shall be maintained for every patient receiving a drug that is dispensed by a prescribing practitioner or optometrist in accordance with Sections 58-17b-309 and 58-17b-309.5 for a period of at least one year from the date of the most recent prescription fill or refill. The medication profile shall be kept as part of the patient's medical record and include, as a minimum, the following information:

(i) full name of the patient, address, telephone number, date of birth or age, and gender;

(ii) patient history where significant, including known allergies and drug reactions; and

(iii) a list of drugs being dispensed including:

(A) name of prescription drug;

(B) strength of prescription drug;

(C) quantity dispensed;

(D) prescription drug lot number and name of manufacturer;

(E) date of filling or refilling;

(F) charge for the prescription drug as dispensed to the patient;

(G) any additional comments relevant to the patient's drug use; and

(H) documentation that patient counseling was provided in accordance with Subsection (7).

(7) A prescribing practitioner or optometrist who is dispensing a cosmetic drug or injectable weight loss drug listed in Subsections (1) and (2) in accordance with Subsection 58-17b-309(4)(c), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5, shall include the following elements when providing patient counseling:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) prescribing practitioner or optometrist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(8) In accordance with Subsection 58-17b-309(4)(c), the medication storage standards that shall be maintained by a prescribing practitioner or optometrist who dispenses a drug under Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5, provides that the storage space shall be:

(a) kept in an area that is well lighted, well ventilated, clean and sanitary;

(b) equipped to permit the orderly storage of prescription drugs in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the drug inventory;

(c) equipped with a security system to permit detection of entry at all times when the prescribing practitioner's or optometrist's office or clinic is closed;

(d) at a temperature which is maintained within a range compatible with the proper storage of drugs; and

(e) securely locked with only the prescribing practitioner or optometrist having access when the prescribing practitioner's or optometrist's office or clinic is closed.

(9) In accordance with Subsections 58-17b-309(5) and 58-17b-309.5(1)(b), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2), or a drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient requires reconstitution or compounding to prepare the drug for administration, the prescribing practitioner or optometrist shall follow the USP-NF 797 standards for sterile compounding.

(10) In accordance with Subsection 58-17b-309(5), factors that shall be considered by licensing boards when determining if a drug may be dispensed by a prescribing practitioner, the prescribing practitioner's employee or optometrist, include whether:

(a)(i) the drug has FDA approval;

(ii)(A) is prescribed and dispensed for the conditions or indication for which the drug was approved to treat; or

(B) the prescribing practitioner or optometrist takes full responsibility for prescribing and dispensing a drug for off-label use;

(b) the drug has been approved for self administration by the FDA;

(c) the stability of the drug is adequate for the supply being dispensed; and

(d) the drug can be safely dispensed by a prescribing practitioner or optometrist.

(11) Standards for reporting to the Utah Controlled Substance Database shall be the same standards as set forth in the Utah Controlled Substance Database Act, Title 58, Chapter 37f, and the Utah Controlled Substance Database Act Rule, R156-37f.

R156-17b-401. Disciplinary Proceedings.

(1) An individual licensed as a pharmacy intern who is currently under disciplinary action and qualifies for licensure as a pharmacist may be issued a pharmacist license under the same

restrictions as the pharmacy intern license.

(2) A pharmacist, pharmacy intern or pharmacy technician whose license or registration is suspended under Subsection 58-17b-701(6) may petition the Division at any time that he can demonstrate the ability to resume competent practice.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(1) preventing or refusing to permit any authorized agent of the Division to conduct an inspection, in violation of Subsection 58-17b-501(1):

initial offense: \$500 - \$2,000

subsequent offense(s): \$5,000

(2) failing to deliver the license or permit or certificate to the Division upon demand, in violation Subsection 58-17b-501(2):

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(3) using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so, in violation of Subsection 58-17b-501(3)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(4) conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so, in violation of Subsection 58-17b-501(3)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(5) buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words inspection, in violation of Subsection 58-17b-501(4):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(6) using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret, in violation of Subsection 58-17b-501(5):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(7) illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug, in violation of Subsection 58-17b-501(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(8) filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so, in violation of Subsection 58-17b-501(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(9) requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(10) being in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):

initial offense: \$500 - \$1,000

subsequent offense(s): \$1,500 - \$5,000

(11) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(12) selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(13) using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):

initial offense: \$100 - \$500

subsequent offense(s): \$1,000 - \$2,500

(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(15) paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):

initial offense: \$2,500 - \$5,000

subsequent offense(s): \$5,500 - \$10,000

(16) misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices, in violation of Subsection 58-17b-502(3):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(18) accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician, in violation of Subsection 58-17b-502(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(20) violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(21) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(22) administering without appropriate training, guidelines, lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(23) disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in violation of Subsection 58-17b-502(10):

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(24) engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):

initial offense: \$100 - \$500
subsequent offense(s): \$2,000 - \$10,000

(25) failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(26) preparing a prescription drug, including compounding a prescription drug, for sale to another pharmacist or pharmaceutical facility, in violation of Subsection 58-17b-502(13):

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(27) preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(14):

initial offense: \$500 - \$1,000
subsequent offense(s): \$2,500 - \$5,000

(28) violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):

initial offense: \$250 - \$500
subsequent offense(s): \$2,000 - \$10,000

(29) failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: \$250 - \$500
subsequent offense(s): \$500 - \$750

(30) failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(31) failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(32) failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):

initial offense: \$50 - \$100
subsequent offense(s): \$200 - \$300

(33) defaulting on a student loan, in violation of Subsection R156-17b-502(5):

initial offense: \$100 - \$200
subsequent offense(s): \$200 - \$500

(34) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):

initial offense: \$500 - \$1,000
subsequent offense(s): \$2,000 - \$10,000

(35) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(36) failing to return a self-inspection report according to the deadline established by the Division, or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):

initial offense: \$100 - \$250
subsequent offense(s): \$300 - \$500

(37) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):

initial violation: \$50 - \$100
failure to comply within determined time: \$250 - \$500

subsequent violations: \$250 - \$500
failure to comply within established time: \$750 - \$1,000

(38) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(39) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(40) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):

Pharmacist initial offense: \$100 - \$250
Pharmacist subsequent offense(s): \$500 - \$2,500

Pharmacy initial offense: \$250 - \$1,000
Pharmacy subsequent offense(s): \$500 - \$5,000

(41) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):

Pharmacist initial offense: \$50 - \$100
Pharmacist subsequent offense(s): \$250 - \$500

Pharmacy initial offense: \$250 - \$500
Pharmacy subsequent offense(s): \$1,000 - \$2,000

(42) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):

Pharmacy personnel initial offense: \$500 - \$2,500
Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000

Pharmacy: \$2,000 per occurrence

(43) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):

Double the original penalty amount up to \$10,000

(44) failing to comply with the PIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(45) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):

initial offense: \$500 - \$2,500
subsequent offense: \$5,000 - \$10,000

(46) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):

initial offense: \$100 - \$500
subsequent offense: \$200 - \$1,000

(47) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):

initial offense: \$100 - \$500
subsequent offense: \$200 - \$1,000

(48) failing to provide PIC information to the Division within 30 days of a change in PIC, in violation of Subsection

R156-17b-502(20):

initial offense: \$100 - \$500
 subsequent offense: \$200 - \$1,000

(49) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):

initial offense: \$500 - \$2,000
 subsequent offense: \$2,000 - \$10,000

(50) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):

Pharmacist initial offense: \$100 - \$300
 Pharmacist subsequent offense(s): \$500 - \$1,000
 Pharmacy initial offense: \$250 - \$500
 Pharmacy subsequent offense(s): \$500 - \$1,250

(51) practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(52) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(53) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):

initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000

(54) knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000

(55) obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: \$100 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A) and 58-1-501(2)(m)(i):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(57) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B) and 58-1-501(2)(m)(ii):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(58) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):

initial offense: \$100 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(59) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(60) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(61) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):

initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000

(62) engaging in conduct, including the use of intoxicants, drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician, in violation of Subsection 58-1-501(2)(e):

initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000

(63) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000

(64) practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(65) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000

(66) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000

(67) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000

(68) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):

initial offense: \$100 - \$1,000
 subsequent offense(s): \$500 - \$2,000

(69) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):

initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000

(70) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000

(71) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct, in violation of Subsection R156-1-501(1):

initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000

(72) practicing a regulated occupation or profession in, through, or with a limited liability company that has omitted the words, "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company, in violation of Subsection R156-1-501(2):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(73) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "L.td." in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(74) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(75) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(76) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(77) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:

initial offense: \$1,000 - \$5,000
subsequent offense(s) \$5,000 - \$10,000

(78) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance which is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(79) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(80) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(81) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action which revokes, suspends, or limits the license, in violation of R156-37-502(3):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(82) failing to maintain controls over controlled substances which would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(83) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(84) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(85) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(86) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(87) any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2) failing to comply with the USP-NF Chapters 795 and 797;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) failing to return according to the deadline established by the Division, or providing false information on a self-inspection report;

(9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;

(10) abandoning a pharmacy or leaving prescription drugs accessible to the public;

(11) failing to identify licensure classification when communicating by any means;

(12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(13) allowing any unauthorized persons in the pharmacy;

(14) failing to offer to counsel any person receiving a prescription medication;

(15) failing to pay an administrative fine that has been assessed in the time designated by the Division;

(16) failing to comply with the PIC standards as established in Section R156-17b-603;

(17) failing to adhere to institutional policies and

procedures related to technician checking of medications when technician checking is utilized;

(18) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);

(19) dispensing medication that has been discontinued by the FDA;

(20) failing to keep or report accurate records of training hours;

(21) failing to provide PIC information to the Division within 30 days of a change in PIC;

(22) requiring a pharmacy, PIC, or any other pharmacist to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(23) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts; and

(24) effective November 30, 2014, failing to comply with prescription container label standards established in USP-NF Chapter 17.

R156-17b-601. Operating Standards - Pharmacy Technician.

In accordance with Subsection 58-17b-102(53), practice as a licensed pharmacy technician is defined as follows:

(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

- (a) receiving written prescriptions;
- (b) taking refill orders;
- (c) entering and retrieving information into and from a database or patient profile;
- (d) preparing labels;
- (e) retrieving medications from inventory;
- (f) counting and pouring into containers;
- (g) placing medications into patient storage containers;
- (h) affixing labels;
- (i) compounding;
- (j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection 58-17b-102(53);
- (k) accepting new prescription drug orders left on voicemail for a pharmacist to review;

(l) performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy, such as medications prepared for distribution to an automated dispensing cabinet, cart fill, crash cart medication tray, or unit dosing from a prepared stock bottle, in accordance with the following operating standards:

(i) technicians authorized by a hospital to check medications shall have at least one year of experience working as a pharmacy technician and at least six months experience at the hospital where the technician is authorized to check medications;

(ii) technicians shall only check steps in the medication distribution process that do not require the professional judgment of a pharmacist and that are supported by sufficient automation or technology to ensure accuracy (e.g. barcode scanning, drug identification automation, checklists, visual aids);

(iii) hospitals that authorize technicians to check medications shall have a training program and ongoing competency assessment that is documented and retrievable for the duration of each technician's employment and at least three years beyond employment, and shall maintain a list of

technicians on staff that are allowed to check medications;

(iv) hospitals that authorize technicians to check medications shall have a medication error reporting system in place and shall be able to produce documentation of its use;

(v) a supervising pharmacist shall be immediately available during all times that a pharmacy technician is checking medications;

(vi) hospitals that authorize technicians to check medications shall have comprehensive policies and procedures that guide technician checking that include the following:

(A) process for technician training and ongoing competency assessment and documentation;

(B) process for supervising technicians who check medications;

(C) list of medications, or types of medications that may or may not be checked by a technician;

(D) description of the automation or technology that will be utilized by the institution to augment the technician check;

(E) process for maintaining a permanent log of the unique initials or identification codes which identify each technician responsible for checked medications by name; and

(F) description of processes used to track and respond to medication errors; and

(m) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new prescriptions or medication orders as described in Subsection 58-17b-102(53)(b)(iv), clarify prescriptions or medication orders nor perform drug utilization reviews. A new prescription, as used in Subsection 58-17b-102(53)(b)(iv), does not include authorization of a refill of a legend drug.

(3) Pharmacy technicians shall have general supervision by a pharmacist in accordance with Subsection R156-17b-603(2)(s).

(4) No more than one pharmacy technician-in-training per shift shall practice in a pharmacy. A pharmacy technician-in-training shall practice only under the direct supervision of a pharmacist.

R156-17b-602. Operating Standards - Pharmacy Intern.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(48), provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

R156-17b-603. Operating Standards - Pharmacist-in-charge.

(1) The PIC shall have the responsibility to oversee the operation of the pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment and medical supplies. The PIC shall be personally in full and actual charge of the pharmacy.

(2) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a secure email address shall be established by the PIC or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC or responsible party shall notify the Division of the pharmacy's secure email address initially as follows:

(a) at the September 30, 2013 renewal for all licensees; and

(b) thereafter, on the initial application for licensure.

(3) The duties of the PIC shall include:

(a) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:

(i) packaging, preparation, compounding and labeling; and

(ii) ensuring that drugs are dispensed safely and accurately as prescribed;

(b) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(c) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;

(d) assuring that a pharmacist or pharmacy intern communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist or pharmacy intern;

(e) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(f) education and training of pharmacy technicians;

(g) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(h) disposal and distribution of drugs from the pharmacy;

(i) bulk compounding of drugs;

(j) storage of all materials, including drugs, chemicals and biologicals;

(k) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

(l) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(m) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(n) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

(o) assuring that any automated pharmacy system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards;

(p) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(q) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

(r) assuring that all personnel working in the pharmacy have the appropriate licensure;

(s) assuring that no pharmacy or pharmacist operates the pharmacy or allows operation of the pharmacy with a ratio of pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(t) assuring that the PIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC within 30 days of the change; and

(u) assuring with regard to the secure email address used for self-audits and pharmacy alerts that:

(i) the pharmacy uses a single email address; and

(ii) the pharmacy notifies the Division, on the form prescribed, of any change in the email address within seven calendar days of the change.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the PIC shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate

regional office of the Drug Enforcement Administration (DEA) containing the following information:

(a) the name, address and DEA registration number of the pharmacy;

(b) the anticipated date of closing;

(c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and

(d) the date on which the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

(a) the date of closing; and

(b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the PIC shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(a) return prescription drugs to manufacturer or supplier for credit or disposal; or

(b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

(a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(b) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the PIC shall forward to the Division a written notice of the closing that includes the following information:

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(5) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter shall be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

(a) DEA registration certificate;

(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and

(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the PIC cannot provide notification 14 days prior to the closing, the PIC shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the PIC is not available to comply with the

requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the beyond use date imprinted on the label.

(2) General requirements for inventory of a pharmacy shall include the following:

(a) the PIC shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a written, typewritten, or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device shall be promptly transcribed;

(e) the inventory may be taken either as the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the PIC shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the PIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure of all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances;

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventories, the perpetual inventory shall be reconciled on the date of the inventory.

(3) Requirements for taking the initial controlled substances inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory. An inventory reporting no Schedule I and II controlled substances shall be listed separately from an inventory reporting no Schedule III, IV, and V controlled substances;

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (4) of this section; and

(d) when combining two pharmacies, each pharmacy shall:
(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

(4) Requirement for annual controlled substances

inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(5) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(6) Requirement for taking inventory when closing a pharmacy includes the PIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(7) All pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include:

(1) meeting the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed pharmacist for not less than two years in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to:

(i) no more than two pharmacy interns during a working shift except as provided in Subsection (ii);

(ii) up to five pharmacy interns at public-health outreach programs such as informational health fairs, chronic disease state screening and education programs, and immunization clinics, provided:

(A) the totality of the circumstances are safe and appropriate according to generally recognized industry standards of practice; and

(B) the preceptor has obtained written approval from the pharmacy interns' schools of pharmacy for the intern's participation; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-607. Operating Standards - Supportive Personnel.

(1) In accordance with Subsection 58-17b-102(66)(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:

- (a) stock ordering and restocking;
- (b) cashiering;
- (c) billing;
- (d) filing;

(e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern or pharmacy technician;

- (f) housekeeping; and
- (g) delivering a pre-filled prescription to a patient.

(2) Supportive personnel shall not enter information into a patient profile or accept verbal refill information.

(3) In accordance with Subsection 58-17b-102(66)(b), the supervision of supportive personnel is defined as follows:

(a) all supportive personnel shall be under the supervision of a licensed pharmacist; and

(b) the licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of pre-filled prescriptions as provided in Subsection (1)(g) above.

(4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Common Carrier Delivery.

A pharmacy that employs the United States Postal Service or other common carrier to deliver a filled prescription directly to a patient shall, under the direction of the pharmacist-in-charge or other responsible employee:

(1) use adequate storage or shipping containers and shipping processes to ensure drug stability and potency. The shipping processes shall include the use of appropriate packaging material and devices, according to the recommendations of the manufacturer or the United States Pharmacopeia Chapter 1079, in order to ensure that the drug is kept at appropriate storage temperatures throughout the delivery process to maintain the integrity of the medication;

(2) use shipping containers that are sealed in a manner to detect evidence of opening or tampering;

(3) develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements. The policies and procedures shall address when drugs do not arrive at their destination in a timely manner or when there is evidence that the integrity of a drug was compromised during shipment. In these instances, the pharmacy shall make provisions for the replacement of the drugs;

(4) provide for an electronic, telephonic, or written communication mechanism for a pharmacist, or a pharmacy intern working under the direct supervision of a pharmacist, to offer counseling to the patient as defined in Section 58-17b-613, including documentation of such counseling; and

(5) provide information to the patient indicating what the patient should do if the integrity of the packaging or drug was compromised during shipment.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon

discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum:

(a) full name of the patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:

- (i) name of prescription drug;
- (ii) strength of prescription drug;
- (iii) quantity dispensed;
- (iv) date of filling or refilling;
- (v) charge for the prescription drug as dispensed to the patient; and

(c) any additional comments relevant to the patient's drug use.

(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Counseling shall be offered orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits oral communication.

(2) A pharmacy facility shall orally offer to counsel but shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such counseling.

(3) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:

- (a) the name and description of the prescription drug;
- (b) the dosage form, dose, route of administration and duration of drug therapy;
- (c) intended use of the drug, when known, and expected action;
- (d) special directions and precautions for preparation, administration and use by the patient;
- (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (f) techniques for self-monitoring drug therapy;
- (g) proper storage;
- (h) prescription refill information;
- (i) action to be taken in the event of a missed dose;
- (j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and
- (k) the date after which the prescription should not be taken or used, or the beyond use date.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records shall be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Only a pharmacist or pharmacy intern may orally provide counseling to a patient or patient's agent and answer questions concerning prescription drugs.

(6) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

(a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;

(b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the

pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and

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

(7) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the patient's drugs.

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

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

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

(b) collecting and reviewing patient histories;

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

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

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

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

(a) inappropriate drug utilization;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

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

(f) drug-allergy interactions; and

(g) clinical abuse or misuse.

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

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

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

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

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

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

(4) In accordance with Sections 58-17b-609 and 58-17b-611, prescription files, including refill information, shall be

maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) either:

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

(ii) the pharmacist is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

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

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

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

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

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

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

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

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

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

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

(13) The address specified in Subsection 58-17b-602(1)(b) shall be a physical address, not a post office box.

(14) In accordance with Subsection 58-37-6(7)(e), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

(15) Effective November 30, 2014, prescription container labels shall comply with standards established in USP-NF Chapter 17.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(27) through (28), 58-17b-602(1), R156-82, and R156-1, prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns or pharmacy technicians electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred;

and

- (iv) the date and time of the transfer.

R156-17b-614a. Operating Standards - General Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), the following operating standards apply to all Class A and Class B pharmacies, which may be supplemented by additional standards defined in this rule applicable to specific types of Class A and B pharmacies. The general operating standards include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) be equipped with a security system to:

(i) permit detection of entry at all times when the facility is closed; and

(ii) provide notice of unauthorized entry to an individual who is able to respond quickly and reasonably assess the entry and resolve the matter.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in simple, moderate or complex non-sterile or any level of sterile compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) shall follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients shall:

(i) be procured from a facility registered with the federal Food and Drug Administration; and

(ii) not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness;

(d) a master worksheet sheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as specific compounding device; and

(viii) storage requirements;

(e) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

(iii) component manufacturer or suitable identifying number;

(iv) container specifications (e.g. syringe, pump cassette);

(v) unique lot or control number assigned to batch;

(vi) beyond use date of batch prepared products;

(vii) date of preparation;

(viii) name, initials or electronic signature of the person or persons involved in the preparation;

(ix) names, initials or electronic signature of the responsible pharmacist;

(x) end-product evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated yield, when appropriate;

(f) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

(i) the unique lot number assigned to the batch;

(ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;

(iii) quantity;

(iv) beyond use date and time, when applicable;

(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(vi) device-specific instructions, where appropriate;

(g) the beyond use date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

(A) references can be found in Trissel's "Handbook on Injectable Drugs", 17th Edition, October 31, 2012;

(B) manufacturer recommendations; and

(C) reliable, published research;

(ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and

(iii) methods for establishing beyond use dates shall be documented; and

(h) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'

(b) R156-1, General Rule of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) R156-17b, Utah Pharmacy Practice Act Rule;

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) R156-37, Utah Controlled Substances Act Rule;

(g) Title 58, Chapter 37f, Controlled Substance Database Act;

(h) R156-37f, Controlled Substance Database Act Rule;

(i) Code of Federal Regulations (CFR) 21, Food and

Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(j) current FDA Approved Drug Products (orange book); and

(k) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility or parent company shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility shall maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) shall be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that controlled substances are listed on the suppliers' invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility shall maintain a record of suppliers' credit memos for controlled substances.

(14) A copy of inventories required under Section R156-17b-605 shall be made available to the Division when requested.

(15) The pharmacy facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

(16) If the pharmacy includes a drop/false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or other measures shall be taken to prevent unauthorized entry into the pharmacy.

R156-17b-614b. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(8) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant

or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and

periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately

available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.

(8) A nuclear pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compound for sterile preparations.

(9) A nuclear pharmacy preparing medications for a specific person shall be licensed as a Class B - nuclear pharmacy if located in Utah, and as a Class D pharmacy if located outside of Utah.

R156-17b-614e. Class B - Dispensing Drugs from an Emergency Department and Upon Discharge from a Rural Hospital Pharmacy.

The "Guidelines for Hospital Pharmacies and Emergency Department Treatment" document, adopted May 21, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard to be utilized by rural hospital emergency departments dispensing a short course of necessary medications to patients when a pharmacy is not open to fill their prescriptions.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesaler distributor shall provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social

security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publicly traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities shall undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.

(7) All pharmaceutical wholesalers and manufacturer shall publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(8) All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(9) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(10) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(11) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form;

and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(12) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(13) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(14) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the

business address of a person described in Subsections R156-17b-102(16)(c) and R156-17b-615(13), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(15) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(16) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the

event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(17) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(18) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(19) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(20) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

(21) No facility located at the same address shall be dually licensed as both a Class C pharmacy and any other classification of Class A or B pharmacy. Nothing within this section prevents a facility from obtaining licensure for a secondary address which operates separate and apart from any other facility upon obtaining proper licensure.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-612(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection or NABP inspection completed as part of the NABP Verified Pharmacy Program (VPP) showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds must follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617a. Class E Pharmacy Operating Standards - General Provisions.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), Class E pharmacies shall have a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs that will be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) A Class E pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compounding for sterile preparations.

R156-17b-617b. Class E Pharmacy Operating Standards - Analytical Laboratory.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an analytical laboratory shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(2) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(3) maintain a list of drugs that will be purchased, stored, used and accounted for;

(4) maintain a list of licensed healthcare providers associated with the operation of the business;

(5) possess prescription drugs for the purpose of analysis; and

(6) take measures to prevent the theft or loss of controlled substances.

R156-17b-617c. Class E Pharmacy Operating Standards -- Animal Control.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal control facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia or immobilization of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia or immobilization purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security which limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially

constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal control facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval which include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia or immobilization of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;

(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

(2) In accordance with Section 58-37-6 and Subsection R156-37-305(1), individuals employed by an agency of the State or any of its political subdivisions who are specifically authorized in writing by their employer to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia or immobilization upon animals, shall be exempt from having a controlled substance license if the employing agency or jurisdiction has obtained a controlled substance license and a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia or immobilization.

R156-17b-617d. Class E Pharmacy Operating Standards-Durable Medical Equipment.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), durable medical equipment facility shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) be equipped to permit the orderly storage of durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) maintain prescription forms and records for a period of five years;

(f) be locked and enclosed in such a way as to bar entry by the public or any non-personnel when the facility is closed; and

(g) post the license of the facility in full view of the public.

(2) A licensed practitioner who administers durable medical equipment to a patient or animal is not engaging in the practice of pharmacy, and does not require a license as a Class E pharmacy.

R156-17b-617e. Class E Pharmacy Operating Standards - Human Clinical Investigational Drug Research Facility.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a human clinical investigational drug research facility licensed as a Class E Pharmacy shall, in addition to the requirements contained in Subsection R156-17b-617a, conduct operations in accordance with the operating standards set forth in 21 CFR Part 312, April 1, 2012 edition, which are hereby incorporated by reference.

(2) In accordance with Subsections 58-37-6(2)(b) and (3)(a)(i), persons licensed to conduct research with controlled substances in Schedules I-V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license.

(3) In accordance with Subsection 58-37-6(2), the following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II-V:

(a) an agent or employee acting in the usual course of the person's business or employment, and

(b) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(4) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.

In accordance with Section 58-17b-302 and Subsection 58-17b 601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following proposed changes:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name

change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership.

(2) Upon approval of the change in location, name, or ownership, and the issuance of a new license, the original license shall be surrendered to the Division.

(b) Upon approval of the name change, the original licenses shall be surrendered to the Division.

R156-17b-619. Operating Standards - Third Party Payors.
Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug

accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The PIC or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

(4) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications",

adopted March 27, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications.

KEY: pharmacists, licensing, pharmacies

August 21, 2014

Notice of Continuation February 23, 2010

58-17b-101

58-17b-601(1)

58-37-1

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-24b. Physical Therapy Practice Act Rule.
R156-24b-101. Title.

This rule is known as the "Physical Therapy Practice Act Rule".

R156-24b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 24b, as used in Title 58, Chapters 1 and 24b or this rule:

(1) "A recognized accreditation agency", as used in Subsections 58-24b-302(1)(c) and (2)(c), means a college or university:

(a) accredited by CAPTE; or
 (b) a foreign education program which is equivalent to a CAPTE accredited program as determined by FSBPT's Foreign Credentialing Commission on Physical Therapy.

(2) "Credential evaluation", as used in Subsections R156-24b-302a(2) and (3), means the appropriate Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist or physical therapist assistant graduated from the physical therapy program.

(3) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(4) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(5) "Joint mobilization", as used in Subsection 58-24b-102(14)(d), means passive and active movements of the joints of a patient, including the spine, to increase the mobility of joint systems; but, does not include specific vertebral adjustment and manipulation of the articulation of the spine by those methods or techniques which are generally recognized as the classic practice of chiropractic.

(6) "Routine assistance", as used in Subsections 58-24b-102(10) and 58-24b-401(3)(b) means:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and

(b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

(7) "Supportive personnel", as used in Subsection R156-24b-503(1), means a physical therapist assistant or a physical therapy aide and does not include a student in a physical therapist or physical therapist assistant program.

(8) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-24b-502.

R156-24b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 24b.

R156-24b-104. Organization - Relationship to Rule R156-1.

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

R156-24b-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-24b-302(1)(c), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24b-302(3), an applicant for licensure as a physical therapist who is educated outside the United States whose degree was not accredited by CAPTE shall document that the applicant's education is equal to a CAPTE accredited degree by submitting to the Division a

credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

- (a) humanities;
- (b) social sciences;
- (c) liberal arts;
- (d) physical sciences;
- (e) biological sciences;
- (f) behavioral sciences;
- (g) mathematics; or
- (h) advanced first aid for health care workers.

(3) In accordance with Subsection 58-24b-302(2), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

- (a) an associates, bachelors, or masters program; or

(b) in accordance with Section 58-1-302, an applicant for a license as a physical therapist assistant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that the applicant's education is substantially equivalent to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

- (a) humanities;
- (b) social sciences;
- (c) liberal arts;
- (d) physical sciences;
- (e) biological sciences;
- (f) behavioral sciences;
- (g) mathematics; or
- (h) advanced first aid for health care workers.

(4) An applicant who has met all requirements for licensure as a physical therapist except passing the FSBPT National Physical Therapy Examination-Physical Therapist may apply for licensure as a physical therapist assistant.

R156-24b-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsections 58-24b-302(1)(e), (2)(e) and (3)(e), each applicant for licensure as a physical therapist or physical therapist assistant shall pass the FSBPT's National Physical Therapy Examination with a passing score as established by the FSBPT, after submitting proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency.

(2) An applicant for licensure as a physical therapist who fails the FSBPT National Physical Therapy Examination-Physical Therapist is eligible to sit for the FSBPT National Physical Therapy Examination-Physical Therapist Assistant after submitting an application for licensure as a Physical Therapist Assistant.

R156-24b-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 24b is established by rule in Section R156-1-308a.

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

R156-24b-303b. Continuing Education.

(1) Required Hours. In accordance with Subsection 58-24b-303(2), during each two year renewal cycle commencing on June 1 of each odd numbered year:

(a) A physical therapist shall be required to complete not fewer than 40 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(b) A physical therapist assistant shall be required to complete not fewer than 20 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(c) Examples of subjects to be covered in an ethics/law course for physical therapists and physical therapist assistants include one or more of the following:

- (i) patient/physical therapist relationships;
- (ii) confidentiality;
- (iii) documentation;
- (iv) charging and coding;
- (v) compliance with state and/or federal laws that impact the practice of physical therapy; and

(vi) any subject addressed in the American Physical Therapy Association Code of Ethics or Guide for Professional Conduct.

(d) The required number of contact hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.

(e) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each contact hour of continuing education course credit shall consist of not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one contact hour of continuing education for every two hours of time spent:

- (i) lecturing or instructing a course;
- (ii) in a post-professional doctorate or transitional doctorate program; or
- (iii) in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association.

(b) Course Content and Type. The course shall be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the course.

(i) The content of the course shall be relevant to the practice of physical therapy and shall be completed in the form of any of the following course types:

- (A) department in-service;
- (B) seminar;
- (C) lecture;
- (D) conference;
- (E) training session;
- (F) webinar;
- (G) internet course;
- (H) distance learning course;
- (I) journal club;
- (J) authoring of an article or textbook publication;
- (K) poster platform presentation;
- (L) specialty certification through the American Board of Physical Therapy Specialties;
- (M) post-professional clinical residency or fellowship approved by the American Physical Therapy Association;
- (N) post-professional doctorate from a CAPTE accredited program;
- (O) lecturing or instructing a continuing education course;

or

- (P) study of a scholarly peer-reviewed journal article.
- (ii) The following limits apply to the number of contact

hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of 40 contact hours for initial specialty certification through the American Board of Physical Therapy Specialties (ABPTS);

(B) a maximum of 40 contact hours for hours spent in a post-professional doctorate or transitional doctorate CAPTE accredited program;

(C) a maximum of 40 contact hours for hours spent in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(D) a maximum of half of the number of contact hours required for renewal for lecturing or instructing in courses meeting these requirements;

(E) a maximum of ten percent of the number of contact hours required for renewal for supervision of a physical therapist or physical therapist assistant student in an accredited college program and the licensee shall receive one contact hour of credit for every 80 hours of clinical instruction;

(F) a maximum of 15 contact hours required for renewal for serving as a clinical mentor for a physical therapy residency or fellowship training program at a credentialed program and the licensee shall receive one contact hour of credit for every ten hours of residency or fellowship;

(G) a maximum of half of the number of contact hours required for renewal for online or distance learning courses that include examination and issuance of a completion certificate;

(H) a maximum of 12 contact hours for authoring a published, peer-reviewed article;

(I) a maximum of 12 contact hours for authoring a textbook chapter;

(J) a maximum of ten contact hours for personal or group study of a scholarly peer-reviewed journal article;

(K) a maximum of six contact hours for authoring a non-peer reviewed article or abstract of published literature or book review; and

(L) a maximum of six contact hours for authoring a poster or platform presentation.

(c) Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

- (i) a recognized accredited college or university;
- (ii) a state or federal agency;
- (iii) a professional association, organization, or facility involved in the practice of physical therapy; or
- (iv) a commercial continuing education provider providing a course related to the practice of physical therapy.

(d) Objectives. The learning objectives of the course shall be clearly stated in course material.

(e) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due.

(i) At a minimum, the documentation shall contain the following:

- (A) the date of the course;
- (B) the name of the course provider;
- (C) the name of the instructor;
- (D) the course title;
- (E) the number of contact hours of continuing education credit; and
- (F) the course objectives.

(ii) If the course is self-directed, such as personal or group study or authoring of a scholarly peer-reviewed journal article, the documentation shall contain the following:

- (A) the dates of study or research;
 - (B) the title of the article, textbook chapter, poster, or platform presentation;
 - (C) an abstract of the article, textbook chapter, poster, or platform presentation;
 - (D) the number of contact hours of continuing education credit; and
 - (E) the objectives of the self-study course.
- (6) Extra Hours of Continuing Education. If a licensee completes more than the required number of contact hours of continuing education during the two-year renewal cycle specified in Subsection (1), up to ten contact hours of the excess may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-24b-305. Temporary Licensure.

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

- (a) submits a complete application for licensure as a physical therapist or physical therapist assistant except the passing of the NPTE examination;
- (b) is a graduate of a CAPTE accredited physical therapy school within three months immediately preceding application for licensure;
- (c) is under the direct, on-site supervision of a physical therapist with an active, non-temporary license if employed as a physical therapist; and
- (d) has registered to take the required licensure examination.

(2) A temporary physical therapist or temporary physical therapist assistant license issued under Subsection (1) expires the earlier of:

- (a) six months from the date of issuance;
- (b) the date upon which the Division receives notice from the examination agency that the individual has failed the examination twice; or
- (c) the date upon which the Division issues the individual full licensure.

(3) A temporary physical therapist or temporary physical therapist assistant license issued in accordance with this section cannot be renewed or extended.

R156-24b-308. Reinstatement of a Physical Therapist or Physical Therapist Assistant License which has Expired Beyond Two Years.

In addition to the requirements established in Section R156-1-308g and in accordance with Subsection 58-1-308(6), an applicant for reinstatement for licensure as a physical therapist or physical therapist assistant, whose license has been expired for two or more years, shall complete one or more of the following upon request of the Division in collaboration with the Board:

- (1) meet with the Board to evaluate the applicant's ability to safely and competently practice physical therapy;
- (2) pass the NPTE examination of the FSBPT if it is determined that examination or reexamination is necessary to verify the applicant's ability to safely and competently practice; and
- (3) establish and carry out a plan of supervision under an approved supervisor which may include up to 4,000 hours of physical therapy training under a temporary physical therapist or physical therapist assistant license before qualifying for full reinstatement of the license.

R156-24b-502. Unprofessional Conduct.

Unprofessional conduct includes:

- (1) violating, as a physical therapist, any provision of the American Physical Therapy Association's Code of Ethics for the Physical Therapist, last amended July 2010, which is hereby adopted and incorporated by reference;
- (2) violating, as a physical therapist, any provision of the American Physical Therapy Association's Guide for Professional Conduct, last amended November 2010, which is hereby adopted and incorporated by reference;
- (3) not providing supervision, as a physical therapist, as set forth in Section R156-24b-503;
- (4) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Standards of Ethical Conduct for the Physical Therapist Assistant, last amended November 2010, which is hereby adopted and incorporated by reference; and
- (5) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Guide for Conduct of the Physical Therapist Assistant, last amended July 2010, which is hereby adopted and incorporated by reference.

R156-24b-503. Physical Therapist Supervisory Authority and Responsibility.

In accordance with Section 58-24b-404, a physical therapist's supervision of a physical therapist assistant or a physical therapy aide shall meet the following conditions:

- (1) a full-time equivalent physical therapist can supervise no more than three full-time equivalent supportive personnel unless approved by the board and Division; and
- (2) a physical therapist shall provide treatment to a patient at least every tenth treatment but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less.

R156-24b-505. Trigger Point Dry Needling - Education and Experience Required - Registration.

(1) A course approved by one of the following organizations meets the standards of Section 58-24b-505 if it includes the hours and treatment sessions specified in Section 58-24b-505:

- (a) Utah Physical Therapy Association (UPTA);
- (b) American Physical Therapy Association (APTA); or
- (c) Federation of State Boards of Physical Therapy (FSBPT).

(2) The level of supervision required during the course established under Section 58-24b-505 is general supervision, as defined in R156-1-102a(4)(c).

(3) General supervision shall be provided by a licensed health care provider who:

- (a) has a scope of practice that includes dry needling; and
- (b) can demonstrate two years of dry needling practice techniques.

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

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58-24b-101

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.**R156-31c. Nurse Licensure Compact Rule.****R156-31c-101. Title.**

This rule is known as the "Nurse Licensure Compact Rule".

R156-31c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31c, as used in Title 58, Chapter 31c or this rule:

(1) "Board", as used in this rule, means the party state's regulatory body responsible for issuing nurse licenses.

(2) "Business days", as used in Subsection R156-31c-201(9), means scheduled work days for the nurse licensing agency of the new home state.

(3) "Information system", as used in this rule, means the coordinated licensure information system as defined in Section 58-31c-102.

(4) "Primary state of residence", as used in this rule, means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

(5) "Public", as used in this rule, means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

R156-31c-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 31c.

R156-31c-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.

R156-31c-201. Issuing a License.

(1) As of July 1, 2005 no applicant for initial licensure will be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or any predecessor examination used for licensure.

(2) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include:

- (a) driver's license with a home address;
- (b) voter registration card displaying a home address;
- (c) federal income tax return declaring the primary state of residence;
- (d) military form no. 2058 - state of legal residence certificate; or
- (e) W-2 form from the United States government or any bureau, division or agency thereof indicating the declared state of residence.

(3) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.

(4) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

(5) When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

(6) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 30 days.

(7) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the 30 day period in Subsection (2) shall be stayed until resolution of the pending investigation.

(8) The former home state license shall be expired and no longer valid upon the issuance of a new home state license.

(9) If a decision is made by the new home state denying licensure the new home state shall notify the former home state within ten business days and the former home state shall take action in accordance with that state's laws and rules.

R156-31c-302. Limitations on Multi-state Licensure Privilege - Discipline.

(1) Home state Boards shall include in all licensure disciplinary orders and stipulation agreements that limit practice or require monitoring the requirement that the licensee subject to said order or stipulation will agree to limit the licensee's practice to the home state during the pendency of the order or stipulation. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards.

(2) An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of residence may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state, a multistate license may be issued.

R156-31c-401. Information System.

(1) Levels of Access:

(a) The public shall have access to nurse licensure information limited to:

- (i) the nurse's name;
- (ii) jurisdiction(s) of licensure;
- (iii) license expiration date(s);
- (iv) licensure classification(s) and status(es);
- (v) public emergency and final disciplinary actions, as defined by the contributing state authority; and
- (vi) the status of multi-state licensure privileges.

(b) Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by the contributing party state authority.

(c) Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party states' authority.

(2) The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten business days correct inaccurate data to the Information System.

(3) The Board shall report to the Information System within ten business days:

(a) disciplinary action, stipulation or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements relating to participation in alternative programs required to remain nonpublic by the contributing state authority);

(b) dismissal of a complaint; and

(c) changes in status of disciplinary action, or licensure encumbrance.

(4) Current significant investigative information shall be deleted from the Information System within ten business days upon report of disciplinary action, stipulation or order requiring

participation in alternative programs or stipulations which limit practice or require monitoring or dismissal of a complaint.

(5) Changes to licensure information in the Information System shall be completed within ten business days upon notification by a Board.

KEY: nurses, licensing

August 16, 2010

Notice of Continuation August 21, 2014

58-31c-103

58-1-106(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-38a. Residence Lien Restriction and Lien Recovery
Fund Rule.**

R156-38a-101. Title.

This rule is known as the "Residence Lien Restriction and Lien Recovery Fund Act Rule."

R156-38a-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rule of the Division of Occupational and Professional Licensing, which shall apply to this rule, as used in this rule:

(1) "Affidavit", as required by Subsection 38-11-110(2)(a), means a form affidavit approved by the Division and posted on the Division's website or otherwise made available for public inspection, that establishes the following:

(a) the applicant is an owner as defined in Subsection 38-11-102(17);

(b) the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

(c) the amount of the general contract as defined in Subsection 38-11-107(1)(b)(i)(B) and clarified in Subsection R156-38a-102(14);

(d) the original contractor as defined in Subsection 38-11-102(16);

(e) the location of the residence; and

(f) any other information necessary to establish eligibility for the issuance of a certificate of compliance under Subsection 38-11-110(2)(a), as determined by the Division.

(2) "Affidavit of Compliance" means the affidavit submitted by the owner seeking issuance of a certificate of compliance under Subsection 38-11-110(1)(a)(ii).

(3) "Applicant" means either a claimant, as defined in Subsection (4), or a homeowner, as defined in Subsection (8), who submits an application for a certificate of compliance.

(4) "Claimant" means a person who submits an application or claim for payment from the fund.

(5) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(4)(a).

(6) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(7) "During the construction", as used in Subsection 38-11-204(1)(c)(ii), means beginning at the time the claimant first provides qualified services and throughout the time frame the claimant provides qualified services.

(8) "Homeowner" means the owner of an owner-occupied residence.

(9) "Licensed or exempt from licensure", as used in Subsection 38-11-204(4) means that, on the date the written contract was entered into, the contractor held a valid, active license issued by the Division pursuant to Title 58, Chapter 55 of the Utah Code in any classification or met any of the exemptions to licensure given in Title 58, Chapters 1 and 55.

(10) "Necessary party" includes the Division, on behalf of the fund, and the applicant.

(11) "Owner", as defined in Subsection 38-11-102(17), does not include any person or developer who builds residences that are offered for sale to the public.

(12) "Permissive party" includes:

(a) with respect to claims for payment: the nonpaying party, the homeowner, and any entity who may be required to reimburse the fund if a claimant's claim is paid from the fund;

(b) with respect to an application for a certificate of compliance: the original contractor and any entity who has demanded from the homeowner payment for qualified services.

(13) "Qualified services", as used in Subsection 38-11-102(20) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

(14) "Totals no more", as used in Subsection 38-11-107(1)(b)(ii)(A), means the inclusion of all changes or additions.

(15) "Written contract", as used in Subsection 38-11-204(4)(a)(i), means one or more documents for the same construction project which collectively contain all of the following:

(a) an offer or agreement conveyed for qualified services that will be performed in the future;

(b) an acceptance of the offer or agreement conveyed prior to the commencement of any qualified services; and

(c) identification of the residence, the parties to the agreement, the qualified services that are to be performed, and an amount to be paid for the qualified services that will be performed.

R156-38a-103a. Authority - Purpose - Organization.

(1) This rule is adopted by the Division under the authority of Section 38-11-103 to enable the Division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of this rule is patterned after the organization of Title 38, Chapter 11.

R156-38a-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the Division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or this rule, be in accordance with Section 58-1-106.

R156-38a-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-205.

R156-38a-105a. Adjudicative Proceedings.

(1) Except as provided in Subsection 38-1-11(4)(d), the classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or this rule.

(5) Claims for payment and applications for a certificate of compliance shall be filed with the Division and served upon all necessary and permissive parties.

(6) Service of claims, applications for a certificate of compliance, or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the Division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each applicant or registrant to maintain a current address with the Division.

(7) A permissive party is required to file a response to a

claim or application for certificate of compliance within 30 days of notification by the Division of the filing of the claim or application for certificate of compliance, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim or application. The response of a permissive party seeking to dispute an owner's affidavit of compliance shall clearly state the basis for the dispute.

(8)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

(10) Notice pursuant to Subsection 38-1-11(4)(f) shall be accomplished by sending a copy of the Division's order by first class, postage paid United States Postal Service mail to each lien claimant listed on the application for certificate of compliance. The address for the lien claimant shall be:

(a) if the lien claimant is a licensee of the Division or a registrant of the fund, the notice shall be mailed to the current mailing address shown on the Division's records; or

(b) if the lien claimant is not a licensee of the Division or a registrant of the fund, the notice shall be mailed to the registered agent address shown on the records of the Division of Corporations and Commercial Code.

R156-38a-105b. Notices of Denial - Notices of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status.

(1)(a) A written notice of denial of a claim or certificate of compliance shall be provided to an applicant who submits a complete application if the Division determines that the application does not meet the requirements of Section 38-11-204 or Subsection 38-11-110(1)(a), respectively.

(b) A written notice of incomplete application shall be provided to an applicant who submits an incomplete application. The notice shall advise the applicant that the application is incomplete and that the application will be denied, unless the applicant corrects the deficiencies within the time period specified in the notice and the application otherwise meets all qualifications for approval.

(2) An applicant may upon written request receive a single 30 day extension of the time period specified in the notice of incomplete application.

(3)(a) A claimant may for any reason be granted a single request for prolonged status;

(b) A homeowner seeking issuance of a certificate of compliance may be granted prolonged status if the homeowner submits a written request documenting that the homeowner:

(i) can be reasonably expected to complete the application

if an additional extension is granted; or

(ii) has filed a pending action in small claims or district court to resolve a dispute of the affidavit of compliance.

(c) An application under (3)(a) or (3)(b) that is granted prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first.

(d) At the end of the one year period, the applicant under (3)(a) or (3)(b) shall be required to either complete the application or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation the outcome of which will affect whether the applicant can demonstrate compliance with Section 38-11-110 or 38-11-204;

(ii) ongoing bankruptcy proceedings involving the nonpaying party or contracting entity that would prevent the applicant from complying with Section 38-11-204;

(iii) continuing compliance by the nonpaying party with a payment agreement between the claimant and the nonpaying party; or

(iv) other reasonable cause as determined by the presiding officer.

(e) Upon expiration of the one year prolonged status of an application, the Division shall issue to the applicant an updated notice of incomplete application pursuant to Subsection (1)(b). Included with that notice shall be a form that provides the applicant an opportunity to:

(i) reactivate the application;

(ii) withdraw the application; or

(iii) request prolonged status be renewed pursuant to Subsection (3)(d).

(f) A request for renewal of prolonged status made under Subsection (3)(d) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

(g) If an applicant's request for prolonged status or renewal of prolonged status is denied, the applicant may request agency review.

(h) An application which has been reactivated from prolonged status may not be again prolonged unless the applicant can establish compliance with the requirements of Subsection (3)(d).

R156-38a-107. Application of Requirements under Subsection 38-11-107(1)(b).

The provisions of Subsection 38-11-107(1)(b) shall apply only to general contracts entered into after May 10, 2010.

R156-38a-108. Notification of Rights under Title 38, Chapter 11.

A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and homeowner and in every notice of intent to hold and claim lien filed under Section 38-1-7 against a homeowner or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if either section (1) or (2) is met:

(1)(a) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer;

(b) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction

Trades Licensing Act at the time the contract was executed; and
 (c) the owner paid in full the contracting entity in accordance with the written contract and any written or oral amendments to the contract; or

(2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000."

(3) An owner who can establish compliance with either section (1) or (2) may perfect the owner's protection by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing. The application is available at www.dopl.utah.gov/rlrf.

R156-38a-109. Format for Instruction and Form Required under Subsection 38-1-11(6).

The instructions and form required under Subsection 38-1-11(6) shall be the Homeowner's Application for Certificate of Compliance prepared by the Division.

R156-38a-110a. Applications by Homeowners seeking issuance of Certificate of Compliance under Subsection 38-11-110(1)(a)(i) - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance seeking protection under Subsection 38-11-110(1)(a)(i):

(1) a copy of the written contract between the homeowner and the contracting entity;

(2)(a) if the homeowner contracted with an original contractor, documentation issued by the Division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(b) if the homeowner contracted with a real estate developer:

(i) a copy of the contract between the real estate developer and the licensed contractor with whom the real estate developer contracted for construction of the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the real estate developer by the contractor;

(ii) credible evidence that the real estate developer offered the residence for sale to the public; and

(iii) documentation issued by the Division that the contractor with whom the real estate developer contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(c) if the real estate developer is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who engages in the construction of a residence that is offered for sale to the public:

(i) a copy of the contract between the homeowner and the contractor real estate developer;

(ii) credible evidence that the contractor real estate developer offered the residence for sale to the public; and

(iii) documentation issued by the Division showing that the contractor real estate developer with whom the homeowner contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(d) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;

(3) one of the following:

(a) except as provided in Subsection (7), an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(4) credible evidence establishing ownership of the incident residence on the date the written contract between the owner and the contracting entity was entered;

(5) one of the following:

(a) a copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence;

(b) if no occupancy permit was required by the local government entity but a final inspection was required, a copy of the final inspection approval issued by the local government entity; or

(c) if neither Subsection (5)(a) nor (b) applies, an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor substantially completed the written contract;

(6)(a) an affidavit from the homeowner establishing that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18); or

(b) other credible evidence establishing that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18).

(7) If any of the following apply, the affidavit described in Subsection (3)(a) shall not be accepted as evidence of payment in full unless that affidavit is accompanied by independent, credible evidence substantiating the statements made in the affidavit:

(a) the affiant is the homeowner;

(b) the homeowner is an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(c) the homeowner has a familial relationship with an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(d) the homeowner has a familial relationship with the affiant;

(e) an owner, member, partner, shareholder, employee, or qualifier of the contracting entity is also an owner, member, partner, shareholder, employee, or qualifier of the homeowner;

(f) the contracting entity is an owner, member, partner, shareholder, employee, or qualifier of the homeowner; or

(g) the affiant stands to benefit in any way from approval of the claim or application for certificate of compliance.

R156-38a-110b. Applications by Homeowners seeking issuance of a Certificate of Compliance under Subsection 38-11-110(1)(a)(ii) - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance seeking protection under Subsection 38-11-110(1)(a)(ii):

(1)(a) the original affidavit of compliance; and

(b) a list of known subcontractors who provided service, labor, or materials under the general contractor.

(2) When an affidavit of compliance is disputed, the owner must submit evidence demonstrating compliance with the requirements specified in Subsection 38-11-110(2)(c)(ii).

R156-38a-202a. Initial Assessment Procedures.

The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

R156-38a-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the Division and Board in accordance with the procedures set

forth in Section 38-11-206.

R156-38a-203. Limitation on Payment of Claims.

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if the Division determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the Division determines a pro-rata payment will likely be required, the Division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the Division when the final pro-rata amounts are determined.

(3) The pro-rata payment amount required by Subsection 38-11-203(4)(b) shall be calculated as follows:

(a) determine the total claim amount each claimant would be entitled to without consideration of the limit set in Subsection 38-11-203(4)(b);

(b) sum the amounts each claimant would be entitled to without consideration of the limit to determine the total amount payable to all claimants without consideration of the limit;

(c) divide the limit amount by the total amount payable to all claimants without consideration of the limit to find the claim allocation ratio; and

(d) for each claim, multiply the total claim amount without consideration of the limit by the claim allocation ratio to find the net payment for each claim.

R156-38a-204a. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the Division establishing that the owner is in compliance with Subsection 38-11-204(4)(a) and (b) for the residence at issue in the claim;

(b) the documents required in Section R156-38a-110a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a);

(ii) the contracting entity was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

(2) if the applicant recorded a notice of claim under Section 38-1-7, a copy of that notice establishing the date that notice was filed.

(3) one of the following as applicable:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against the nonpaying party to recover monies owed for qualified services performed on the owner-occupied residence; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from satisfying Subsection (a);

(4) one of the following:

(a) a copy of a civil judgment entered in favor of the claimant against the nonpaying party containing a finding that the nonpaying party failed to pay the claimant pursuant to their contract; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from obtaining a civil judgment, including a copy of the proof of claim filed by the claimant with the bankruptcy court, together with credible

evidence establishing that the nonpaying party failed to pay the claimant pursuant to their contract;

(5) one or more of the following as applicable:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of the claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the nonpaying party or that said nonpaying party could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the nonpaying party prevented the claimant from satisfying Subparagraphs (a) and (b);

(6) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(7) one or more of the following:

(a) a copy of invoices setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed; or

(c) credible evidence setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed.

(8) If the claimant is requesting payment of costs and attorney fees other than those specifically enumerated in the judgment against the nonpaying party, the claim shall include documentation of those costs and fees adequate for the Division to apply the requirements set forth in Section R156-38a-204d.

(9) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(10) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38a-204b. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant

against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) a copy of the certificate of compliance issued by the Division establishing that the owner is in compliance with Subsection 38-11-204(4)(a) and (b) for the residence at issue in the claim;

(ii) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18);

(iii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18); or

(iv) other credible evidence establishing that the owner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18).

(2) When a laborer makes claim on multiple residences as a result of a single incident of nonpayment by the same employer, the Division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38a-204c. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, attorney fees, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant provides qualified service on multiple properties, irrespective of whether those properties are owner-occupied residences, and files claim for payment on some or all of those properties and the claims are supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by property, the amount of costs and attorney fees shall be allocated among the related properties using the following formula: (Qualified services attributable to the owner-occupied residence at issue in the claim divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(4) The interest rate or rates applicable to a claim shall be the rate for the year or years in which payment for the qualified services was due.

(5) If the evidence submitted in fulfillment of Subsection R156-38a-204b(7) does not specify the date or dates upon which payment was due, the Division shall assume payment was

due 30 calendar days after the date on which the claimant billed the nonpaying party for the qualified services.

(6) If the qualified services at issue in a claim were billed in two or more installments and payment was due on two or more dates, the claimant shall provide documentation sufficient for the Division to determine each payment due date and the attendant portion of qualified services for which payment was due on that date. If the claimant does not provide sufficient documentation, the Division shall assume the nonpaying party's debt accrued evenly throughout the period so an equal portion of the qualified services balance shall be applied to each billing installment.

(7) If a claimant receives partial payment for qualified services between the time judgment is entered and the claim is filed, the Division shall calculate payment amounts by accruing costs, attorney fees and interest to the date of the payment then reducing the individual balances of first interest, then costs, then attorney fees, and finally qualified services to a zero balance until the entire payment is applied. The Division shall then make payment of the remaining balances plus additional accrued interest on the remaining qualified services balance.

R156-38a-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100	S211	General Engineering Contractor
	S213	Boiler Installation Contractor
	S262	Industrial Piping Contractor
		Gunnite and Pressure Grouting Contractor
S320	S321	Steel Erection Contractor
	S322	Steel Reinforcing Contractor
		Metal Building Erection Contractor
	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
		General Building Trades Instructor
I102		General Electrical Trades Instructor
		General Plumbing Trades Instructor
I103		General Mechanical Trades Instructor
		General Mechanical Trades Instructor

(2) A licensee with a license classification that requires registration in the fund whose license is on inactive status on the assessment date of any special assessment of the fund, is not required to pay the special assessment during the time the license remains on inactive status.

(3) Before a licensee can reactivate the license, the licensee must pay any special assessment or assessments within the two years prior to the reactivation date.

R156-38a-301b. Event Necessitating Registration - Name

Change by Qualified Beneficiary - Reorganization of Registrant's Business Type - Transferability of Registration.

(1) Any change in entity status by a registrant requires registration with the Fund by the new or surviving entity before that entity is a qualified beneficiary.

(2) The following constitute a change of entity status for purposes of Subsection (1):

(a) creation of a new legal entity as a successor or related-party entity of the registrant;

(b) change from one form of legal entity to another by the registrant; or

(c) merger or other similar transaction wherein the existing registrant is acquired by or assumed into another entity and no longer conducts business as its own legal entity.

(3) A qualified beneficiary registrant shall notify the Division in writing of a name change within 30 days of the change becoming effective. The notice shall provide the following:

(a) the registrant's prior name;

(b) the registrant's new name;

(c) the registrant's registration number; and

(d) proof of registration with the Division of Corporations and Commercial Code as required by state law.

(4) A registration shall not be transferred, lent, borrowed, sold, exchanged for consideration, assigned, or made available for use by any entity other than the registrant for any reason.

(5) A claimant shall not be considered a qualified beneficiary registrant merely by virtue of owning or being owned by an entity that is a qualified beneficiary.

804(2)(c)(i)(B) "evidence of a cash deposit" must be an account at a federally insured depository institution that is pledged to the protected party and is payable to the protected party upon the occurrence of specified conditions in a written agreement.

KEY: licensing, contractors, liens

September 9, 2010

Notice of Continuation January 7, 2010

38-11-101

58-1-106(1)(a)

58-1-202(1)(a)

R156-38a-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be sent to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2)(a) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the Division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of the registrant to maintain a current mailing address with the Division; or

(b) If a registrant has authorized the Division to send a renewal notice by email, the email shall be sent to the last email address shown on the Division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of the registrant to maintain a current email address with the Division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal applications must be received by the Division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(5) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

R156-38a-401. Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien.

To qualify as alternate security under Subsection 38-1a-

**R156. Commerce, Occupational and Professional Licensing.
R156-53. Landscape Architects Licensing Act Rule.
R156-53-101. Title.**

This rule is known as the "Landscape Architects Licensing Act Rule".

R156-53-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 53, as used in Title 58, Chapters 1 and 53 or this rule:

(1) "Employee" or "employee, subordinate, associate, or drafter" of a landscape architect, as used in Subsections 58-53-102(5) and 58-53-603(2) and this rule, means one or more individuals not licensed as a landscape architect who are working for, with, or providing landscape architect services under the supervision or direction of the licensed landscape architect.

(2) "Under the direction of the landscape architect" or "under the supervision of a licensee", as used in Subsection 58-53-102(5) and 58-53-603(2), means that the unlicensed employee, subordinate, associate, or drafter of the landscape architect engages in the practice of landscape architecture only on work initiated by the landscape architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the landscape architect.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 53 is further defined, in accordance with Subsections 58-1-203(1)(e) and 58-53-102(7), in Section R156-53-401.

R156-53-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1) to enable the Division to administer Title 58, Chapter 53.

R156-53-104. 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.

R156-53-302a. Qualifications for Licensure - Education and Experience Requirements.

(1) In accordance with Subsections 58-53-302(1)(d)(i) and (ii), an applicant for licensure shall complete the following education or experience requirements:

(a) a bachelors or masters degree in landscape architecture which shall be from a curriculum accredited by the Landscape Architectural Accreditation Board (LAAB); or

(b) eight years of experience shall be full or part time employment for periods of time not less than ten weeks in length under the general supervision of one or more licensed landscape architects.

R156-53-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-53-302(1)(e), an applicant for licensure shall pass the following examinations:

(1) the Landscape Architect Registration Examination (LARE) of the Council of Landscape Architectural Registration Boards; or

(2) the Uniform National Exam for Landscape Architects (UNE) of the Council of Landscape Architectural Registration Boards.

R156-53-303. 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 53 is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with

Section R156-1-308c.

R156-53-304. Continuing Education for Landscape Architects.

In accordance with Section 58-53-303, the continuing education standards for landscape architects are established as follows:

(1) Beginning June 1, 2012, during each two-year renewal cycle ending on May 31 of each even-numbered year, a licensed landscape architect shall complete not less than 16 contact hours of continuing education directly related to the licensee's professional practice.

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

(3) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(4) A continuing education activity shall meet the following standards:

(a) Activity Content and Types. The activity shall have an identifiable, clear statement of purpose and defined objective directly related to the practice of landscape architecture and directly related to topics involving the public health, safety, and welfare of landscape architecture practice and the ethical standards of landscape architectural practice.

(i) Health, safety, welfare, and ethical standards as used in this Subsection are defined to include the following:

(A) The definition of "health" shall include aspects of landscape architectural practice that have salutary effects among users of sites, site structures, pedestrian ways, and vehicular facilities that are environmental and affect human health. Examples include all aspects of air quality, provisions of personal hygiene, and use of non-toxic materials and finishes.

(B) The definition of "safety" shall include aspects of landscape architectural practice intended to limit or prevent accidental injury or death among users such as sites, site structures, or construction sites. Examples include safe access and egress within sites and site structures, minimization of slipping hazards on exterior surfaces, correct proportions and visibility of stairs, safety railings, and accommodations for users with disabilities.

(C) The definition of "welfare" shall include aspects of landscape architectural practice that consist of values that may be social, psychological, cultural, spiritual, physical, aesthetic, and monetary in nature. Examples include spaces that afford natural light, natural materials, or views of nature or whose proportions, color, or materials engender positive emotional responses from its users.

(D) The definition of "ethical standards for landscape architectural practice" shall include the ASLA Code of Professional Ethics, specified in Subsection R156-53-401(4).

(ii) The activity shall be completed in the form of any of the following activity types:

(A) in-house programs sponsored by an organization;

(B) seminar;

(C) lecture;

(D) conference;

(E) training session;

(F) webinar;

(G) internet course;

(H) distance learning course;

(I) televised course;

(J) authoring of an article, textbook, or professional book publication;

(K) lecturing in or instructing a continuing education course;

(L) study of a scholarly peer-reviewed journal article, book, or book chapter;

(M) pro-bono service that has a clear purpose and objective and maintains, improves, or expands the professional knowledge or skill of the licensee;

(N) mentoring one or more students for one day at the Landscape Architecture Shadow Mentor Day, mentoring program, or other mentoring event;

(O) membership on a state regulatory board for the practice of landscape architecture;

(P) serving as an elected officer or appointed chair of a committee or organization in a professional society or organization;

(Q) serving as an elected officer or appointed member of a professional board or commission; or

(R) serving as an exam grader or on a committee writing exam materials for a professional registration or licensing examination.

(b) Objectives. The activity learning objectives shall be clearly stated in activity material.

(c) Faculty. The activity shall be prepared and presented by individuals who are qualified by education, training, and experience.

(d) Activity provider or sponsor. The activity shall be approved by, conducted by, or under the sponsorship of one of the following:

(i) an accredited college or university;

(ii) a state or federal agency;

(iii) a professional association, organization, or company related to the practice of landscape architecture; or

(iv) a commercial continuing education provider providing an activity related to the practice of landscape architecture.

(e) Documentation. Each licensee shall maintain documentation as proof of compliance with this section, such as certificate of completion, school transcript, activity description, activity syllabi, or other activity materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due.

(i) At a minimum, the documentation shall contain the following:

(A) the date of the activity;

(B) the name of the activity provider;

(C) the name of the instructor;

(D) the activity title;

(E) the number of contact hours of continuing education credit; and

(F) the activity objectives.

(ii) If the activity is self-directed, such as study or authoring of a scholarly peer-reviewed journal article, book, book chapter, or similar document, the documentation shall contain the following:

(A) the dates of study or research;

(B) the title of the paper, article, or book;

(C) an abstract of the paper, article, or book;

(D) the number of contact hours of continuing education credit; and

(E) the objectives of the self-study activity.

(f) Contact hour. Each contact hour of continuing education credit shall consist of not fewer than 50 minutes of education. One professional development hour (PDH) is equal to one contact hour. One university quarter credit hour is equivalent to 40 contact hours. One university semester credit hour is equivalent to 45 contact hours. One International Association of Continuing Education and Training (IACET) Continuing Education Unit (CEU) is equivalent to ten contact hours.

(5) Extra hours of continuing education. If a licensee completes more than the required number of contact hours of continuing education during the two-year renewal cycle

specified in Subsection (1), up to eight contact hours of the excess may be carried over to the next two-year renewal cycle. No education received prior to the license being granted may be carried forward to apply towards the continuing education required after the license is granted.

(6) Credit for continuing education shall be recognized in accordance with the following:

(a) a maximum of six hours per two-year renewal cycle may be recognized for teaching in a college or university or for teaching continuing education activities in the field of landscape architecture, provided it is the first time the material was taught;

(b) a maximum of three hours per two-year renewal cycle may be recognized for authoring or study of published papers, articles, or books directly related to the practice of landscape architecture;

(c) a maximum of four hours per two-year renewal cycle may be recognized for pro-bono service that has a clear purpose and objective and maintains, improves, and expands the professional knowledge or skill of the licensee;

(d) a maximum of two hours per two-year renewal cycle may be recognized for mentoring one or more students for one day at the Landscape Architecture Shadow Mentor Day, mentoring program, or other mentoring event;

(e) a maximum of four hours per two-year renewal cycle may be recognized for membership on a state regulatory board for the practice of landscape architecture;

(f) a maximum of two hours per two-year renewal cycle may be recognized for serving as an elected officer or appointed chair of a committee or organization in a professional society or organization related to the practice of landscape architecture;

(g) a maximum of two hours per two-year renewal cycle may be recognized for serving as an elected officer or appointed member of a governmental board or commission related to the practice of landscape architecture;

(h) a maximum of four hours per two-year renewal cycle may be recognized for serving as an exam grader or on a committee writing exam materials for a professional registration or licensing examination; and

(i) unlimited hours may be recognized for continuing education that is online, distance-learning, correspondence course, or home study provided the activity verifies registration and participation in the activity by means of a test or other assessment method including a final summary, individual paper, or individual project which demonstrates that the participant learned the material presented.

R156-53-308. Reinstatement of a Landscape Architect License which has Expired Beyond Two Years.

In addition to the requirements in Section R156-1-308g and in accordance with Subsection 58-1-308(6), an applicant for reinstatement for licensure as a landscape architect, whose license has been expired for two or more years, shall:

(1) upon request by the Division, meet with the Board to evaluate the applicant's ability to safely and competently practice landscape architecture;

(2) pass the Landscape Architect Registration Examination (LARE) of the Council of Landscape Architectural Registration Boards if it is determined by the Board and Division that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice landscape architecture; and

(3) provide documentation that the licensee, within two years prior to the date of the application, completed 16 hours of continuing education.

R156-53-401. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final site plan to a client, when the licensee represents, or could reasonably expect the

**R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Act Rule.
R156-55b-101. Title.**

This rule is known as the "Electricians Licensing Act Rule".

R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or this rule:

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in this rule means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as adopted in the State Construction Code Adoption Act and State Construction Code. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements.

(2) "Immediate supervision", as used in Subsection 58-55-102(23) and this rule means that the apprentice and the supervising electrician are physically present on the same project or jobsite but are not required to be within sight of one another.

(3) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. Minor electrical work does not include modification or repair of "Premises Wiring" as defined in the National Electrical Code, and does not include installation of a disconnecting means or outlet. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(4) "Residential project" as used in Subsection 58-55-302(3)(j)(ii) pertains to supervision and means electrical work performed in residential dwellings of up to three stories and will include single and multi family dwellings.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

(6) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Unlicensed persons may handle wire on large wire pulls involving conduit of two inches or larger or assist in moving heavy electrical equipment when the task is performed in the immediate presence of and supervised by properly licensed master, journeyman, residential master or residential journeyman electricians acting within the scope of their licenses.

R156-55b-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.

R156-55b-104. Organization - Relationship to Rule R156-1.

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

R156-55b-302a. Qualifications for Licensure - Education and Experience Requirements.

(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.

(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.

(5) The applicant shall pass each class with a minimum score of 75%.

(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.

(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).

(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.

R156-55b-302b. Qualifications for Licensure - Work Experience - Residential Journeyman and Journeyman Electricians.

(1) In order to satisfy Subsections 58-55-302(3)(h) and (i), an applicant for a license as a residential journeyman electrician or journeyman electrician shall document the following on-the-job work experience:

(a) Residential Journeyman Electrician:

(i) at least 600 hours in boxes and fittings, conduit, wireways and cableways and associated fittings;

(ii) at least 3000 hours in wire and cable, individual conductors and multi-conductors cables, and non-metallic sheathed cable;

(iii) at least 300 hours in distribution and utilization equipment, transformers, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motor and other distribution or utilization equipment; and

(iv) at least 300 hours in specialized work including

grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(b) Journeyman electrician:

(i) at least 4000 hours in raceways, boxes and fittings, conduit, wireways, cableways and other raceways and associated fittings, and non-metallic sheathed cable;

(ii) at least 800 hours in wire and cable, individual conductors and multi-conductor cables;

(iii) at least 400 hours in distribution and utilization equipment including transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors and other distribution and utilization equipment; and

(iv) at least 400 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(2) No more than 2000 hours of work experience may be credited for each 12 month period.

(3) No credit will be given for work experience performed illegally.

R156-55b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations that are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) Admission to the examinations is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b.

(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.

(4)(a) If an applicant fails one or more parts of the examination, the applicant shall retake any part of the examination failed.

(b) An applicant shall wait at least 25 days between the first two retakes and thereafter shall wait 120 days between retakes.

(5) If an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter, the applicant shall retake any previously passed part of the examination.

R156-55b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a.

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

R156-55b-304. Continuing Education.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 16 hours of continuing

education during each two year license term. A minimum of 12 hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering the National Electrical Code as adopted or proposed for adoption.

(3) "Professional continuing education" is defined as education covering:

(a) National Fire Protection Association 70E (NFPA 70E), Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA);

(b) electrical motors and motor controls, electrical tool usage; and

(c) supervision skills related to the electrical trade.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved apprenticeship program; or

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(6) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used 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 electrical trade.

(c) Content. The content of the course shall be relevant to the practice of the electrical trade 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 may be recognized for continuing education that is provided through internet or home study courses provided that the course verifies registration and participation in the course by means of a passing a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.

(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 to individuals completing the course a certificate which 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;
- (vi) the attendee's name;
- (vii) the attendee's license number; and
- (viii) the signature of the course provider.

(7) 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.

(8) 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 (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses 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.

(10) 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.

(11) 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.

(12) 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 which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which 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. The 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.

R156-55b-305. Licensure by Endorsement.

The Division may issue a license by endorsement in accordance with the provisions of Section 58-1-302.

R156-55b-401. Conduct of Apprentice and Supervising

Electrician.

(1) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with Subsection 58-55-302(3)(j), Sections 58-55-501, 58-55-502, and R156-55b-501.

(2) For the purposes of Subsections 58-55-102(31), 58-55-302(3)(j) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same electrical contractor;

(b) the electrical contractor may contract with a licensed professional employer organization to employ such persons.

(3) An apprentice in the fourth through sixth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period. In the seventh and succeeding years of training, the nonsupervision provision no longer applies and the apprentice shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as a licensee to comply with the supervision requirements established by Subsection 58-55-302(3)(j).

(2) failing as a licensee to carry a copy of a current license at all times when performing electrical work;

(3) failing as an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

R156-55b-502. Administrative Penalties.

(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties applicable under this rule.

(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.

KEY: occupational licensing, licensing, contractors, electricians

August 21, 2014

Notice of Continuation October 4, 2011

58-1-106(1)(a)

58-1-202(1)(a)

58-55-308(1)

R156. Commerce, Occupational and Professional Licensing.
R156-60a. Social Worker Licensing Act Rule.

R156-60a-101. Title.

This rule is known as the "Social Worker Licensing Act Rule".

R156-60a-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) "ASWB" means the Association of Social Work Boards.

(2) "CSW" means a licensed certified social worker.

(3) "Clinical social work concentration and practicum", "clinical concentration and practicum" "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(d)(ii), means a track of professional education which is specifically established to prepare an individual to practice or engage in mental health therapy.

(4) "Human growth and development", as used in Subsection 58-60-205(4)(d)(iii)(A)(II), means a course at an accredited college or university that includes an emphasis on human growth and development across the lifespan, from conception to death.

(5) "LCSW" means a licensed clinical social worker.

(6) "Social welfare policy", as used in Subsection 58-60-205(4)(d)(iii)(A)(I), means a course at an accredited college or university that includes emphasis on the following:

(a) local, state, and federal social policy and how it impacts individuals, families, and communities; and

(b) the diverse needs of social welfare recipients.

(7) "Social work practice methods", as used in Subsection 58-60-205(4)(d)(iii)(A)(III), means a course at a program accredited by the Council for Social Work Education as defined in Subsection 58-60-202(5) that includes emphasis on the following:

(a) generalist social work practice at the individual, family, group, organization, and community levels;

(b) planned client change process and social work roles at various levels;

(c) application of key values and principles of the National Association of Social Workers (NASW) Code of Ethics and resolution of ethical dilemmas; and

(d) evaluation of programs and direct practice in the social work field.

(8) "SSW" means a licensed social service worker.

(9) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202(4)(a), means that the CSW is under the general supervision of an LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601.

R156-60a-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.

R156-60a-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.

R156-60a-302a. Education Requirements for Licensure as an SSW.

In accordance with Subsection 58-60-205(4)(d)(ii), a master's degree qualifying an applicant for licensure as an SSW shall be in a field of social work, psychology, marriage and family therapy, or mental health counseling.

R156-60a-302b. Experience Requirements for Licensure as an SSW.

In accordance with Subsection 58-60-205(4)(d)(iii)(B), the 2,000 hours of supervised qualifying experience for licensure as an SSW shall be:

(1) performed as an employee of an agency providing social work services and activities;

(2) performed according to a written social work job description approved by the licensed mental health therapist supervisor; and

(3) completed over a duration of not less than one year.

R156-60a-302c. Training Requirements for Licensure as an LCSW.

In accordance with Subsections 58-60-205(1)(e),(f) and (g), and 58-60-202(4)(a), the 4,000 hours of clinical social work and mental health therapy training qualifying an applicant for licensure as an LCSW shall:

(1) be obtained after completion of the education requirement set forth in Subsections 58-60-205(1)(d) and (g) and shall not include any clinical practicum hours obtained as part of the education program;

(2) be completed over a duration of not less than two years;

(3) be completed while licensed as a CSW;

(4) be completed while the CSW is an employee of a public or private agency engaged in mental health therapy;

(5) be completed under a program of general supervision by an LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601; and

(6) include the following training requirements:

(a) individual, family, and group therapy;

(b) crisis intervention;

(c) intermediate treatment; and

(d) long term treatment.

R156-60a-302d. Examination Requirements.

(1) In accordance with Subsection 58-60-205(1)(h), the examination requirements for licensure as an LCSW include passing the Clinical Examination of the ASWB or the Clinical Social Workers Examination of the State of California.

(2) In accordance with Subsection 58-60-205(2)(e), the examination requirements for licensure as a CSW shall include passing the Masters, Advanced Generalist, or Clinical Examination of the ASWB.

(3) In accordance with Subsection 58-60-205(4)(e), the examination requirements for licensure as an SSW shall include passing the Bachelors Examination of the ASWB.

(4) Applicants for any ASWB exam must pass the exam within one year from date of the Division's approval for the applicant to take the exam. If the applicant does not pass the required exam within one year, the pending license application shall be denied.

(5) Applicants requesting additional time to complete any ASWB exam in accordance with Subsection 58-60-205(5) shall complete an ASWB application for special arrangements approved by the Division.

R156-60a-302e. Requirements to Become an LCSW Supervisor.

In accordance with Subsections 58-60-202(3)(c) and 58-60-205(1)(e) and (f), in order for an LCSW to supervise a CSW, the LCSW shall:

(1) be currently licensed in good standing as an LCSW; and

(2) have engaged in active practice as an LCSW, including mental health therapy, for a period of not less than two years prior to supervising a CSW.

R156-60a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308a(1).

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

R156-60a-304. Continuing Education.

(1) Required Hours. In accordance with Subsection 58-60-105(1) and Section 58-60-205.5, during each two year renewal cycle commencing on October 1 of each even numbered year:

(a) An LCSW shall be required to complete not fewer than 40 hours of continuing education. A minimum of three of the 40 hours shall be completed in ethics and/or law.

(b) An SSW shall be required to complete not fewer than 20 hours of continuing education of which a minimum of three contact hours shall be completed in ethics and/or law.

(c) The required number of hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.

(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 not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one hour of continuing education for every one hour of time spent lecturing or instructing a continuing education course;

(b) Course Content and Type. A course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the course;

(i) The content of the course shall be relevant to the practice of social work and shall be completed in the form of any of the following course types:

- (A) seminar;
- (B) lecture;
- (C) conference;
- (D) training session;
- (E) webinar;
- (F) internet course;
- (G) distance learning course;
- (H) specialty certification; or
- (I) lecturing or instructing of a continuing education course;

(ii) The following limits apply to the number of hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of ten hours for lecturing or instructing of continuing education courses meeting these requirements; and

(B) a maximum of 15 hours for online, distance learning, or home study courses that include examination and issuance of a completion certificate;

(c) Course Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

- (i) a recognized accredited college or university;
- (ii) a community mental health agency or a public agency that provides mental health services;
- (iii) a professional association or society involved in the practice of social work; or
- (iv) the Division of Occupational and Professional Licensing;

(d) Objectives. The learning objectives of the course shall be clearly stated in course material;

(e) Faculty. The course shall be prepared and presented by

individuals who are qualified by education, training and experience;

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due; and

(i) At a minimum, the documentation shall contain the following:

- (A) date of the course;
- (B) name of the course provider;
- (C) name of the instructor;
- (D) course title;
- (E) number of hours of continuing education credit; and
- (F) course objectives.

(3) Extra Hours of Continuing Education. If a licensee completes more than the required number of hours of continuing education during a two year renewal cycle specified in Subsection (1), up to ten hours of the excess over the required number may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-60a-308. Reinstatement of an LCSW License which has Expired Beyond Two Years.

In accordance with Subsection 58-1-308(6) and Section R156-1-308g, an applicant for reinstatement for licensure as an LCSW, whose license expired after two years following the expiration of that license, shall:

(1) upon request, meet with the Board to evaluate the applicant's ability to safely and competently practice clinical social work and mental health therapy;

(2) upon recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of clinical social work and mental health therapy training as a CSW before qualifying for reinstatement of the LCSW license;

(3) pass the Clinical Examination of the ASWB if it is determined by the Board that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice clinical social work and mental health therapy; and

(4) complete a minimum of 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to safely and competently practice clinical social work and mental health therapy.

R156-60a-309. Exemption from Licensure Clarified.

The exemption specified in Subsection 58-60-107(5) does not permit an individual to engage in the 4,000 hours of clinical social work and mental health therapy training without first becoming licensed as a CSW.

R156-60a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) using the abbreviated title of LCSW unless licensed as an LCSW;

(2) using the abbreviated title of CSW unless licensed as a CSW;

(3) using the abbreviated title of SSW unless licensed as an SSW;

(4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302c and R156-60a-601.

(5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:

(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy when not in compliance with Section R156-60a-302c and Subsection R156-60a-601(7);

(7) engaging in or aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(9) failing to establish and maintain professional boundaries with a client or former client;

(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;

(11) engaging in sexual activities or sexual contact with a client with or without client consent;

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services even when there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;

(17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

(22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as approved by the NASW 1996 Delegate Assembly and revised by the 2008 NASW Delegate Assembly, which is adopted and incorporated by reference.

R156-60a-601. Duties and Responsibilities of an LCSW Supervisor.

The duties and responsibilities of an LCSW supervisor are further established as follows:

(1) be professionally responsible for the acts and practices of the supervisee;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee or is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, rules, standards and ethics applicable to the practice of social work;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) supervise not more than three individuals who are lawfully engaged in mental health therapy training, unless otherwise approved by the Division in collaboration with the Board;

(9) not begin supervision of a CSW until having met the requirements of Section R156-60a-302e; and

(10) in accordance with Subsections 58-60-205(1)(e) and (f), submit to the Division on forms made available by the Division:

(a) documentation of the training hours completed by the CSW; and

(b) an evaluation of the CSW, with respect to the quality of the work performed and the competency of the CSW to practice clinical social work and mental health therapy.

R156-60a-602. Supervision - Scope of Practice - SSW.

In accordance with Subsections 58-60-202(2) and (6), supervision and scope of practice of an SSW is further defined as follows:

(1) general supervision of an SSW by a licensed mental health therapist is only required where mental health therapy services are provided; and

(2) the scope of practice of the SSW shall be in accordance with a written social work job description approved by the licensed mental health therapist supervisor, except that the SSW may not engage in the supervised or unsupervised practice of mental health therapy.

KEY: licensing, social workers

July 9, 2012

Notice of Continuation August 4, 2014

58-60-201

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-60b. Marriage and Family Therapist Licensing Act Rule.

R156-60b-101. Title.

This rule is known as the "Marriage and Family Therapist Licensing Act Rule".

R156-60b-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) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Directly related to marriage and family therapy", as used in R156-60b-304(2)(a), means that the continuing education course meets at least one of the following criteria:

(a) approved by an international, national, or state marriage and family therapy association, national or state marriage and family therapy regulatory board, or a COAMFTE accredited program; or

(b) title, objective, or official description of the course indicates instruction on relationships, couples, or families.

(3) "Face to face supervision" as described in Subsection R156-60b-302a(1)(b)(ii)(G) includes both individual and group supervision.

(4) "Group supervision" means supervision between the supervisor and no more than three supervisees, unless preapproved by the Board.

(5) "Individual supervision" means supervision between the supervisor and one or two supervisees.

(6) "Practicum", as used in R156-60b-302a(1)(b)(ii)(G) means a clinical program of training at an accredited school under general supervision in a setting other than a student's private practice.

(7) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60b-502.

R156-60b-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, Part 3.

R156-60b-104. Organization - Relationship to R156-1.

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

R156-60b-302a. Qualifications for Licensure - Education Requirements.

(1) Pursuant to Subsection 58-60-305(1)(d), an applicant applying for licensure as a marriage and family therapist shall:

(a) produce certified transcripts evidencing completion of a clinical master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education at the time the applicant obtained the education; or

(b)(i) produce certified transcripts evidencing completion of a clinical master's degree in marriage and family therapy or equivalent from a program accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(ii) A program under Subsection (1)(b)(i) shall include the following:

(A) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(B) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

(C) six semester hours/nine quarter hours of course work

in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(D) three semester hours/four quarter hours in professional ethics;

(E) three semester hours/four quarter hours in research methodology and data analysis;

(F) three semester hours/four quarter hours in electives in marriage and family therapy; and

(G) a clinical practicum of not fewer than 600 hours which includes not fewer than 100 hours of face to face supervision and not fewer than 500 direct contact hours of face to face supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

R156-60b-302b. Qualifications for Licensure - Experience Requirements.

(1) Pursuant to Subsections 58-60-305(1)(e) and (f), an applicant shall complete marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours of supervised training which shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under the supervision of a marriage and family therapist supervisor meeting the requirements under Section 58-60-307;

(d) include at least 100 hours of direct supervision spread uniformly throughout the training period;

(e) in accordance with Subsection 58-60-305(1)(f), include a minimum of 1,000 hours of mental health therapy of which at least 500 hours are in couple or family therapy with two or more clients participating and at least one physically present; and

(f) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(1)(e) and (f), and Subsection R156-60b-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the Division and Board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

R156-60b-302c. Qualifications for Licensure - Examination Requirements.

Pursuant to the provisions of Subsection 58-60-305(1)(g), an applicant for licensure as a marriage and family therapist must pass the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor.

Pursuant to the provisions of Subsection 58-60-307(1), to be qualified as a marriage and family therapist supervisor for training required under Subsections 58-60-305(1)(e) and (f), an individual shall:

(1) be licensed as a marriage and family therapist in good standing for not less than two years;

(2) be currently licensed as a marriage and family therapist in the state in which the training is being performed; and

(3) meet one of the following three options:

(a) be currently approved by AAMFT as a marriage and family therapist supervisor;

(b) have successfully completed a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited marriage and family therapy (MFT) program at an accredited university; or

(c)(i) have successfully completed 20 clock hours of instruction sponsored by AAMFT or the Utah Association for Marriage and Family Therapy (UAMFT).

(ii) The instruction under Subsection (3)(c)(i) shall include the following:

(A) four hours of review of models of MFT and supervision;

(B) eight hours of MFT supervision processes and practice;

(C) four hours of research on effective outcomes and processes of supervision; and

(D) four hours of AAMFT Code of Ethics, state rules and case studies related to MFT supervision.

R156-60b-302e. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established to provide the supervisor shall:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the Division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the Division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;

(9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established;

(10) supervise not more than three supervisees at any given time unless approved by the Board and Division;

(11) provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee.

R156-60b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308a(1).

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

R156-60b-304. Continuing Education.

(1) In accordance with Section 58-60-105, there is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.

(2) During each two year period commencing October 1st of each even numbered year, a marriage and family therapist shall be required to complete not fewer than 40 hours of continuing education directly related to the licensee's professional practice of which:

(a) at least 15 hours must be directly related to marriage and family therapy; and

(b) at least six hours must be in ethics/law, of which at least three hours must be directly related to marriage and family therapy.

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

(4) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training, and experience to provide continuing education relevant to the practice of a mental health therapist; and

(c) have a method of verification of attendance and completion.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of universities, colleges or professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of mental health therapy;

(b) a maximum of 14 hours per two year period may be recognized for:

(i) teaching courses under Subsection (5)(a); or

(ii) supervision of an individual completing the experience requirement for licensure as a mental health therapist;

(c) a maximum of 15 hours per two year period may be recognized for clinical readings, internet or distance learning courses directly related to practice as a mental health therapist; and

(d) a maximum of two hours per two year period may be for continuing education from the Division of Occupational and Professional Licensing.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.

(7) A licensee requesting a waiver of the continuing education requirement must comply with requirements as established by rule in R156-1-308d.

(8) If a licensee completes more than the required number of hours of continuing education during a two year renewal cycle specified in Subsection (2), up to ten hours of the excess over the required number may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-60b-306. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) upon request, meet with the Board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a marriage and family therapist and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if it is determined by the Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a marriage and family therapist.

R156-60b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302d and R156-60b-302e;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b;

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to maintain professional boundaries with a client within two years after the formal termination of therapy or last professional contact, with or without client consent, including engaging in any of the following:

(a) dual or multiple relationships; or

(b) romantic, intimate or sexual relationship;

(6) if engaging in any activity or relationship referenced in Subsection (5) with a client after two years following the formal termination of therapy or last professional contact, failing to demonstrate that there has been no exploitation or injury to the client or to the client's immediate family;

(7) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of the personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;

(8) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(9) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(10) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination

concerning an individual's civil or legal rights;

(11) exploiting a client for personal gain;

(12) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(13) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(14) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(15) failure to cooperate with the Division during an investigation; and

(16) failing to abide by provisions 1 to 8.8 of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective July 1, 2012, which is adopted and incorporated by reference.

**KEY: licensing, therapists, marriage and family therapist
December 23, 2013**

58-1-106(1)(a)

Notice of Continuation August 5, 2014

58-1-202(1)(a)

58-60-301

R156. Commerce, Occupational and Professional Licensing.**R156-67. Utah Medical Practice Act Rule.****R156-67-101. Title.**

This rule shall be known as the "Utah Medical Practice Act Rule".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or this rule:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(5) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(6) "FSMB" means the Federation of State Medical Boards.

(7) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(8) "LMCC" means the Licentiate of the Medical Council of Canada.

(9) "NBME" means the National Board of Medical Examiners.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(1)(e), in Section R156-67-502.

(11) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. 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 67.

R156-67-104. 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.

R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall submit the Federation Credentials Verification Service (FCVS) form.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the

required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(i) Candidates who fail any combination of the USMLE, FLEX and NBME three times must provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.

R156-67-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 67 is established by rule in Section R156-1-308a.

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

R156-67-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-67-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the ACCME.

(b) A maximum of six hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;
 (b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(3) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health; and

(4) in accordance with Section 58-67-305, a medical assistant, while working under the indirect supervision of a

licensed physician and surgeon, may not additionally engage in:

- (a) diagnosing; or
- (b) establishing a treatment plan.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603; and

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference.

R156-67-503. Administrative Penalties.

(1) In accordance with Subsection 58-67-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-67-501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-67-501(1)(c)(i) or (ii):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-67-501(1)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-67-502:

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-67-502(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted

by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-67-502(2):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-67-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-67-502(4):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-67-502(5):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act in violation of Subsection R156-67-502(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-67-502(7):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-67-502(8):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-67-502(9):

First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-67-502(10):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-67-502(11):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection R156-67-502(13):
 First Offense: \$100-\$500
 Second Offense: \$500-\$3,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-67-603 in violation of Subsection R156-67-502(14):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-67-502(15):
 First Offense: \$100-\$5,000
 Second Offense: \$500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-67-602:
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):
 First Offense: \$5,000-\$10,000
 Second Offense: \$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard

applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of

Subsection 58-1-501(2)(i):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ee) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ff) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(hh) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ii) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(jj) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-501(2):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(kk) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-501(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ll) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(mm) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(nn) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: \$500-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):
 First Offense: \$5,000-\$10,000
 Second Offense: \$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(vv) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):
 First Offense: \$5,000-\$10,000
 Second Offense: \$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

- (1) all applicable laws, regulations, and rules; and
- (2) the "AMA Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

- (a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;
- (b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;
- (c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:
 - (i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;
 - (ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or

therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: physicians, licensing

August 21, 2014

Notice of Continuation March 14, 2011

58-67-101

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-78. Vocational Rehabilitation Counselors Licensing
Act Rule.**

R156-78-101. Title.

This rule is known as the "Vocational Rehabilitation Counselors Licensing Act Rule".

R156-78-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 78, as used in Title 58, Chapters 1 and 78 or in this rule:

(1) "Disability related work experience", as used in Subsection 58-78-302(1)(e), means the practice of providing vocational rehabilitation services as defined in Subsection 58-78-102(3).

(2) "In-service" means a continuing education course that meets the requirements in Subsection R156-78-304(4) and is hosted or sponsored by an employer and not by a professional association, society or organization related to the profession.

(3) "LVRC" means a licensed vocational rehabilitation counselor.

(4) "Related field", as used in Subsection 58-78-302(1)(d), includes any of the following:

- (a) psychology;
- (b) clinical psychology;
- (c) counseling psychology;
- (d) professional guidance and counseling;
- (e) social work;
- (f) educational counseling;
- (g) educational psychology with rehabilitation counseling emphasis;

(h) special education with rehabilitation counseling emphasis; and

(i) any other field deemed substantially related to the practice of rehabilitation counseling by the Board and Division.

(5) "Supervision", as used in Subsections 58-78-302(1)(e) and 58-78-304(1) means general supervision in that the supervising licensee:

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

(b) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio, or some other means, whether or not the supervising licensee is located on the same premises as the person being supervised;

(c) provides necessary consultation within a reasonable period of time; and

(d) maintains routine personal contact with the person being supervised.

(6) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 78, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-78-502.

(7) "Vocational assessment", as used in Subsection 58-78-102(3)(c), includes the performance of forensic evaluations.

R156-78-103. 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 78.

R156-78-104. Organization - Relationship to Rule R156-1.

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

R156-78-302b. Experience Requirement.

(1) An applicant for licensure verifying completion of the experience requirement established in Subsection 58-78-302(1)(e) with experience that was not completed under the supervision of an LVRC must apply for licensure before January 1, 2011 for the applicant's experience to count toward

completion of the experience requirement. Applicants for licensure who apply on or after January 1, 2011 must verify completion of experience under the supervision of an LVRC.

(2) A maximum of 2,000 hours of supervised experience during any one year period may be credited toward the 4,000 hour supervised experience requirement.

R156-78-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-78-302(1)(f), the examination requirements for licensure as an LVRC include passing the Certified Rehabilitation Counselor Examination administered by the Commission on Rehabilitation Counselor Certification.

R156-78-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 78 is established by rule in Section R156-1-308a.

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

R156-78-304. Continuing Education.

(1) In accordance with Subsection 58-78-303(3), there is established a continuing education requirement for all individuals licensed under Title 58, Chapter 78 as an LVRC.

(2) During the two-year license renewal period commencing April 1 of each odd-numbered year, an LVRC shall be required to complete not less than 40 hours of continuing education directly related to the licensee's professional practice of which a minimum of four hours must be completed in ethics/law.

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

(4) Continuing education under this Section shall:

- (a) be relevant to the licensee's professional practice;
- (b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education relevant to the practice of vocational rehabilitation counseling; and
- (c) have a method of verification of attendance and completion.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, conferences or training sessions which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of:

- (i) universities and colleges; or
- (ii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of vocational rehabilitation counselors;

(b) a maximum of 20 hours per two-year period may be recognized for:

- (i) teaching courses under Subsection (5)(a); or
- (ii) supervision of an individual completing the experience requirement for licensure as an LVRC;

(c) a maximum of 12 hours per two-year period may be recognized for in-service directly related to practice as an LVRC; and

(d) a maximum of 24 hours of continuing education per two-year period may be recognized for internet or distance-learning courses that include an examination and issuance of a

completion certificate.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.

(7) A licensee requesting a waiver of the continuing education requirement must comply with requirements as established by rule in Section R156-1-308d.

(8) If a licensee completes more than the required number of hours of continuing education during a two-year renewal cycle specified in Subsection (2), up to ten hours of the excess over the required number may be carried over to the next two-year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-78-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) violating any provision of the Code of Professional Ethics for Rehabilitation Counselors, published by the Commission on Rehabilitation Counselor Certification, effective January 1, 2010, which is hereby adopted and incorporated by reference;

(b) failing to report in writing to the Division unlawful or unprofessional conduct as defined in Section 58-78-501, 58-78-502 and this Section, by a person licensed under Title 58, Chapter 78 within ten days after learning of the conduct, if the conduct:

(i)(A) results in disciplinary action taken by the licensee's employer or a professional association; or

(B) results in a significant adverse impact on the public's health, safety or welfare; and

(ii) was not known by the licensee to have already been reported to the Division; and

(c) failing to provide general supervision as defined in Subsection R156-78-102(4).

KEY: licensing, vocational rehabilitation counselor

August 8, 2011 58-78-101
Notice of Continuation August 14, 2014 58-1-106(1)(a)
58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-79. Hunting Guides and Outfitters Licensing Act Rule.
R156-79-101. Title.**

This rule is known as the "Hunting Guides and Outfitters Licensing Act Rule".

R156-79-102. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-79-102, which shall apply to this rule:

(1) "Client" means the person who engages the professional services of a licensed outfitter.

(2) "Certification of completion of a first aid and CPR course" means a valid certificate issued by one of the following:

(a) the American Red Cross;

(b) the American Heart Association; or

(c) another organization that offers substantially equivalent first aid and CPR courses as approved by the Division in collaboration with the Board, to denote the individual whose name and signature appear on the certificate has successfully completed the applicable first aid and CPR course.

(3) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement;

(f) a conviction which has been reduced pursuant to Subsection 76-3-402(1); or

(g) an equivalent of any of the above in another jurisdiction.

(4) "Packing" means transporting for hire or compensation hunters, game animals or equipment in the field.

(5) "Protecting" means the hunting guide and outfitter protects any clientele.

(6) "Responsible charge" means having principal care for the safety and welfare of a client when and where the hunting guide services are being provided.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 79, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-79-502.

R156-79-103. 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 79.

R156-79-104. Organization - Relationship to Rule R156-1.

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

R156-79-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) and Section 58-79-302, the application requirements for licensure are defined herein.

(1) An application for licensure as a hunting guide shall be accompanied by:

(a) a current certification of criminal history record for the applicant issued by the state of Utah or the applicant's state of residency;

(b) a current certification of wildlife violation record for the applicant issued by the Utah Division of Wildlife Resources or the State Wildlife Agency of the applicant's state of residency;

(c) a verification of licensure from any state or territory of the United States or province of Canada in which the applicant

has been licensed as a hunting guide; and

(d) a copy of a current photo identification for the applicant showing the applicant is at least 18 years of age. Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or the District of Columbia; or

(ii) an identification card issued by a federal, state or local government agency of the United States of America.

(2) An application for licensure as an outfitter shall be accompanied by:

(a) a current certification of criminal history record for the applicant issued by the state of Utah or the applicant's state of residency;

(b) a current certification of wildlife violation record for the applicant issued by the Utah Division of Wildlife Resources or the State Wildlife Agency of the applicant's state of residency;

(c) a verification of licensure from any state or territory of the United States or province of Canada in which the applicant has been licensed; and

(d) a copy of a current photo identification for the applicant showing the applicant is at least 18 years of age. Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or the District of Columbia; or

(ii) an identification card issued by a federal, state or local government agency of the United States of America.

R156-79-302b. Qualifications for Licensure - Education Requirements.

(1) For the purposes of this rule, to show an applicant has successfully completed the basic education, any hunting guide or outfitter applicant shall provide the following:

(a) documentation of having obtained a high school diploma or its equivalent or a higher education degree; and

(b) documentation showing the completion of a first aid and CPR course.

R156-79-302c. Qualifications for Licensure - Examination Requirements.

(1) For the purposes of this rule, to show an applicant possesses a minimum degree of skill and ability, the applicant shall meet one of the following requirements:

(a) an applicant as a hunting guide shall pass the Utah Hunting Guide Examination or the Utah Outfitters Examination with a passing score of at least 75%; or

(b) an applicant as an outfitter shall pass the Utah Outfitters Examination with a passing score of at least 75%.

(2) An individual 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.

(3) The examination shall include an assessment of the applicant's knowledge of the Division hunting guide and outfitter statute and rules, the Utah Division of Wildlife Resources statutes and rules, the United States Forest Service and the Federal Bureau of Land Management hunting guidelines and rules and the Utah Hunter Safety Course guidelines and rules.

R156-79-302d. Qualifications for Licensure - Good Moral Character.

(1) Any one or more of the following may disqualify an individual from obtaining or holding a hunting guide or outfitters license:

(a) a violation of a state or federal wildlife, hunting guide or outfitter statute or regulation that includes:

- (i) an imprisonment for more than five days within the previous five years;
- (ii) an unsuspended fine of more than \$2,000 imposed in the previous 12 months;
- (iii) an unsuspended fine of more than \$3,000 imposed in the previous 36 months; or
- (iv) an unsuspended fine of more than \$5,000 imposed in the previous 60 months;
- (b) any felony conviction within the last five years;
- (c) a conviction for a felony offense against a person under Title 76, Chapter 5, Utah Criminal Code, Offenses Against the Person, within the last ten years;
- (d) a conviction for one or more misdemeanors involving wildlife violations;
- (e) a conviction for a misdemeanor crime of moral turpitude;
- (f) a suspension or disciplinary action involving an individual obtaining or exercising the privileges granted by a hunting guide or outfitter license in this state or another state of the United States, province of Canada, by the Federal Bureau of Land Management or by the United States Forest Service; and
- (g) a loss of the privilege to hunt in this state or another state of the United States or province of Canada.

R156-79-302e. Qualifications for Licensure - Equivalent Training Requirements.

(1) For the purposes of this rule, to show an applicant meets the training requirements as a hunting guide, the applicant shall produce the following:

(a) documentation showing certification of completion of a basic hunting guide training program pursuant to Section R156-79-601; or

(b) documentation of 100 days of on-the-job training that is substantially equivalent to the basic hunting guide training program. No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-601.

(2) To show an applicant meets the training requirements as an outfitter, the applicant shall produce the following:

(a) documentation showing certification of completion of a basic outfitter training program pursuant to Section R156-79-602; or

(b) documentation of 100 days of on-the-job training that is substantially equivalent to the basic outfitter training program. No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-602.

(3) The documentation required in Subsections (1)(b) and (2)(b) shall include:

(a) an affidavit by either a hunting guide or outfitter attesting to the on-the-job training as a hunting guide or an outfitter claimed by the applicant;

(b) self-authenticating guarantees of reliability include, but are not limited to:

(i) federal land agency records;

(ii) approved training program records; or

(iii) client affidavits or letters.

(4) Three days of on-the-job training may be waived by the Division in collaboration with the Board for every day of training completed by an applicant who has attended a hunting guide or outfitter school approved by the Division in collaboration with the Board.

R156-79-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 79 is established by rule in Section R156-1-308a.

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

R156-79-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in fraud in advertising or soliciting hunting guide or outfitter services to the public;

(2) intentionally obstructing or hindering or attempting to obstruct or hinder lawful hunting by a person who is not a client or an employee of the licensee;

(3) failing to promptly report, unless a reasonable means of communication is not readily available, and in no event later than 20 days, a violation of a state or federal wildlife, game or guiding statute that the licensee believes was committed by a client or an employee of the licensee;

(4) materially breaching a contract with a person using the hunting guide or outfitting services of the licensee;

(5) failing to provide any animal used in the conduct of business with proper food, drink and subjecting any animal used in the conduct of business to needless abuse or cruel and inhumane treatment;

(6) failing to allow the Division or its agents access at all times to inspect hunting camps, whether or not the licensee is present;

(7) failing to provide a hunting guide for every two hunters in wilderness areas and for up to six hunters in all other areas of the state;

(8) failing to maintain a neat, orderly and sanitary camp by not disposing of garbage, debris and human waste appropriately;

(9) failing to provide clean drinking water or failing to protect all food from contamination;

(10) failing to separate livestock facilities and camp facilities and to protect streams from contamination;

(11) failing to report any serious injury or fatality to the client or outfitter staff to a federal, state, county or local law enforcement authority;

(12) failing to comply with state and federal laws and rules regarding hunting guides and outfitters;

(13) failing to comply with state and federal wildlife laws and rules;

(14) failing to adequately maintain general liability insurance coverage as required by the United States Forest Service or the Bureau of Land Management;

(15) failing as a licensee to carry an original license, as issued by the Division, at all times when providing outfitting or hunting guide services;

(16) providing outfitter services to a person who is not properly licensed to hunt for the species sought by that person; and

(17) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the Utah Guides and Outfitters Association, adopted July 1, 2006, which is hereby incorporated by reference.

R156-79-601. Content of the Hunting Guide Basic Training Program.

The basic training program for hunting guides as required in Subsection 58-79-302(1)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:

(1) hunter ethics and attitude;

(2) horsemanship;

(3) packing skills;

(4) transporting livestock;

(5) shoeing skills;

(6) use of a crosscut saw and ax;

(7) use of a chain saw;

(8) general weapon knowledge;

(9) guiding skills;

(10) game care;

(11) setting up camps;

- (12) hunting guide regulations;
- (13) first aid and CPR training provided by:
 - (a) the American Red Cross;
 - (b) the American Heart Association; or
 - (c) another organization that offers substantially equivalent training as approved by the Division in collaboration with the Board;
- (14) orienteering and map reading;
- (15) a basic off highway vehicle safety course;
- (16) basic survival skills;
- (17) trophy judging skills;
- (18) other topics pertinent to the hunting guide industry as approved by the Division in collaboration with the Board.

R156-79-602. Content of the Outfitter Basic Training Program.

The basic training program for outfitters as required in Subsection 58-79-302(2)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:

- (1) hunter ethics and attitude;
- (2) horsemanship;
- (3) packing skills;
- (4) transporting livestock;
- (5) shoeing skills;
- (6) use of a crosscut saw and ax;
- (7) use of a chain saw;
- (8) general weapon knowledge;
- (9) guiding skills;
- (10) game care;
- (11) setting up camps;
- (12) outfitter regulations;
- (13) first aid and CPR training provided by:
 - (a) the American Red Cross;
 - (b) the American Heart Association; or
 - (c) another organization that offers substantially equivalent training as approved by the Division in collaboration with the Board;
- (14) a basic off highway vehicle safety course;
- (15) supervising clientele;
- (16) hiring and supervising personnel;
- (17) outfitter advertising;
- (18) booking clientele;
- (19) going into business for oneself;
- (20) wilderness and back country manners;
- (21) applying federal and state land use policies;
- (22) obtaining all necessary licenses and permits and permissions for the client;
- (23) providing staff and facilities for hunting;
- (24) providing a hunting guide;
- (25) orienteering and map reading;
- (26) basic survival skills;
- (27) trophy judging skills;
- (28) other topics pertinent to the outfitter industry as approved by the Division in collaboration with the Board.

KEY: licensing, hunting guides, outfitters

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58-1-202(1)(a)

R277. Education, Administration.**R277-462. Comprehensive Counseling and Guidance Program.****R277-462-1. Definitions.**

A. "Board" means the Utah State Board of Education.
 B. "Comprehensive Counseling and Guidance Program" or "Program" means the organization of resources to meet the priority needs of students and inform and involve parents or guardians through four delivery system components:

(1) school guidance curriculum which means providing guidance content to all students in a systemic way;

(2) individual student planning which means individualized education and career planning, including student college and career planning with all students;

(3) responsive services and dropout prevention component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the Program and the needs of the school system itself.

C. "Comprehensive Counseling and Guidance Steering and Advisory Committee" means representatives designated by the USOE comprised of school district counseling supervisors, school district career and technical education directors, PTA, the school counselor professional association, practicing school counselors, and others designated by the USOE.

D. "Counselor to student ratio" means licensed school counselors full time equivalent (FTE), or percentage thereof, who by license and assignment are identified as school counselors for secondary students on October 1 of each year compared to the secondary student enrollment on October 1 of each year.

E. "Direct services" means time spent on the school guidance curriculum, individual student planning, including SEOP/Plan for College and Career Readiness, and responsive services/dropout prevention activities meeting students' identified needs as discerned by students, school personnel and parents or guardians consistent with LEA policy.

F. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

G. "School counselor" means an educator licensed as a school counselor in the state of Utah consistent with R277-506 and assigned to provide counseling and information to students to make appropriate educational and career choices.

H. "Secondary school" means a school providing services to students in grades 7-12.

I. "Secondary student" means a student in grades 7-12.

J. "SEOP/Plan for College and Career Readiness" means a student education occupation plan. An SEOP/Plan for College and Career Readiness is a developmentally organized intervention process that includes:

(1) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(2) all Board, local board and local charter board graduation requirements;

(3) evidence of parent or guardian, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies, including job placement when appropriate; and

(5) identification of post secondary goals and approved sequence of courses.

K. "Student achievement" means academic performance, career development, multi cultural/global citizenship, personal/social development, continued student engagement in learning, attendance, SEOP/Plan for College and Career Readiness outcomes and other measures of adequate yearly progress.

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

M. "Utah Career and Technical Education Consortium"

means representatives of nine Career and Technical Education Regional Planning Areas.

N. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which an LEA is eligible.

R277-462-2. 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-1a-106(2)(b) which directs local boards to develop policies for the implementation of student SEOP/Plan for College and Career Readiness, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Counseling and Guidance Programs administered by the Board.

C. This rule establishes counselor to student ratios as a requirement for all secondary schools.

D. This rule establishes provisions for LEAs not meeting the minimum counselor to student ratios.

E. This rule directs that LEA and building level policies and practices shall free licensed school counselors for appropriate identified activities with secondary students.

R277-462-3. Comprehensive Counseling and Guidance Program Approval and Qualifying Criteria.

A. Comprehensive Counseling and Guidance disbursement criteria:

(1) In order to qualify for Comprehensive Counseling and Guidance Program funds, secondary schools shall implement SEOP/Plan for College and Career Readiness policies and practices, consistent with Section 53A-1a-106(2)(b), local board or charter school governing board policies, and the school improvement plans developed for AdvancED Accreditation and required under Section 53A-1a-108.5.

(2) Consistent with the Utah Model for Comprehensive Counseling and Guidance: K-12 Programs, the USOE shall designate to each LEA secondary school, that has a USOE-approved school counseling program, a WPU base for the first 400 students as determined by the October 1 enrollment of the previous fiscal year. The USOE shall also designate a per student allotment, as funds are available, for each additional student beyond 400, capping at a maximum 1200 students, if the local Program maintains Program criteria and ratios required in R277-462-5.

(3) The USOE shall give priority for funding to grades nine through twelve for career and technical education programs including the Comprehensive Counseling and Guidance Program and any remaining funds to grades seven and eight for the schools which meet Comprehensive Counseling and Guidance Program standards. The USOE shall distribute funds directed to grades seven and eight according to the formula under R277-462-3A(2) following the distribution of funds for grades nine through twelve.

(4) The USOE shall integrate the LEA Comprehensive Counseling and Guidance Program into the mission of the schools consistently with the AdvancED Accreditation process as defined in R277-410, Accreditation of Schools. School counselors shall provide evidence that the Comprehensive Counseling and Guidance Program contributes to student achievement included in the local school improvement plan.

(5) Secondary schools shall qualify for Comprehensive Counseling and Guidance Program funds through participation in a regular schedule of on-site reviews by the USOE Comprehensive Counseling and Guidance Program specialist in the formal process and team members determined by the LEA's authorizing agency during the interim review process. The USOE shall schedule the on-site review process for secondary

schools as defined in R277-410 which shall take place at a minimum every six years with three year interim reviews, in a format determined by the LEA authorizing agency. Successful on-site reviews of the Comprehensive Counseling and Guidance Program shall indicate a balance of activities consistent with Program models and goals in individual student planning, guidance curriculum, responsive services and system support.

(6) If a charter school requires assistance from a school district in conducting the charter school's on-site review, the charter school shall negotiate that payment.

(7) The USOE shall distribute Comprehensive Counseling and Guidance Program funds to LEAs for secondary schools that have completed a regular schedule of on-site reviews and that meet all of the following criteria:

(a) Approval of the Comprehensive Counseling and Guidance Program by the local board of education or charter school governing board and on-going communication with the local or governing board regarding Program goals and outcomes supported by data;

(b) Regular participation of guidance team members in USOE sponsored Comprehensive Counseling and Guidance training;

(c) Adequate resources and support for guidance facilities, material, equipment, clerical support, and school improvement processes;

(d) Evidence that eighty-five percent of aggregate counselors' time is devoted to DIRECT service to students through a balanced program of individual planning, school guidance curriculum, and responsive services consistent with the results of the school needs data;

(e) Communication, collaboration, and coordination within the feeder system regarding the Comprehensive Counseling and Guidance Program;

(f) School-wide student/parent/teacher needs assessment data for the Comprehensive Counseling and Guidance Program gathered and analyzed at least every three years;

(g) Structures and processes to ensure effective Program management including advisory/steering committees functioning effectively, school counselors working as Program leaders, and the Comprehensive Counseling and Guidance Program contributing to school improvement teams;

(h) Available responsive services to address the immediate concerns and identified needs of students through an education-oriented and programmatic approach; services should compliment and coordinate with existing school programs, families, and school and community resources;

(i) Delivery to students of a developmental and sequential school guidance curriculum in harmony with content standards identified in the Utah model for the Comprehensive Counseling and Guidance Program. A school/LEA shall set priorities for Guidance curriculum consistent with the results of the school needs assessment process;

(j) Assistance for students in career development, including awareness and exploration, job seeking and finding skills, and post high school placement;

(k) Facilitation by school counselors of SEOP/Plan for College and Career Readiness, both as a process and a product;

(l) Involvement of parents/guardians in all available Comprehensive Counseling and Guidance Program steering/advisory committees; and

(m) Program elements that are designed to recognize and address the needs of diverse students.

B. All LEA governing boards that receive Comprehensive Counseling and Guidance Program funds shall provide written certification that all Program standards are met by each school consistent with USOE cycles and using USOE forms.

(1) All LEAs receiving Comprehensive Counseling and Guidance Program funds shall provide school-based data projects demonstrating program or intervention effectiveness as

required by the USOE.

(2) School counselors shall not devote significant time to non-school counseling activities, including test coordination and assessment, and other activities inconsistent with the Program.

R277-462-4. Student Education Occupation Planning in a Plan for College and Career Readiness.

A. Secondary schools that receive Comprehensive Counseling and Guidance funds shall complete a written SEOP/Plan for College and Career Readiness for all students.

B. Parents/guardians shall sign plans.

C. Students shall complete four year plans at the beginning of their seventh grade year.

D. Students' schools shall maintain plans.

E. Students' course registration and class changes shall be consistent with their written SEOP/Plan for College and Career Readiness.

F. Schools shall implement students' SEOP/Plan for College and Career Readiness process consistent with the policies and goals of the LEAs' Comprehensive Counseling and Guidance Program models. The student, student's parent/guardian and school personnel shall cooperatively develop the SEOP/Plan for College and Career Readiness during the first two years in which the student is enrolled in grades 7-12 in the LEA. The implementation for the SEOP/Plan for College and Career Readiness shall include the following conferences:

(1) 7th and 8th grades: minimally one individual and one group conference during the two years;

(2) 9th and 10th grades: minimally one individual conference and one group conference during the two years;

(3) 11th and 12th grades: minimally one individual conference and one group conference during the two years; and

(4) other meetings, as necessary.

R277-462-5. School Counselor to Student Ratios.

A. All LEAs shall certify to the USOE by October 1 annually:

(1) the full time equivalent licensed school counselors employed and assigned to each school;

(2) that secondary school counselor to secondary student ratios at the LEA level are one (counselor) to 350 (students) or better; and

(3) that variations requiring less than a .25 full time equivalent licensed school counselor shall be permitted at the school level.

B. June 1 annually, LEAs not meeting the ratio required under R277-462-5A(2), shall submit to the Board a plan to be approved for meeting established ratios in a reasonable time frame to continue to receive Comprehensive Counseling and Guidance Program and Minimum School Program funding.

C. LEAs that do not satisfy required counselor to student ratios shall receive reasonable notice and reasonable time periods and opportunities to explain and remedy the failure to comply.

D. As additional funds for Comprehensive Counseling and Guidance Programs become available, the Board may require LEAs to have lower counselor to student ratios, following notice to LEAs.

R277-462-6. Use of Comprehensive Counseling and Guidance Program Funds.

A. LEAs shall satisfy all provisions of R277-462 including established counselor to student ratios, in order to receive Comprehensive Counseling and Guidance Program funds.

B. LEAs shall use funds for students in grades 7-12.

C. LEAs may use funds to provide a school guidance curriculum.

D. LEAs may use funds to provide student activities that

support the SEOP/Plan for College and Career Readiness process.

E. LEAs may use funds for personnel costs including clerical positions that support the SEOP/Plan for College and Career Readiness process.

F. LEAs may use funds for Career Center equipment or materials such as computers, media equipment, computer software, occupational information, SEOP/Plan for College and Career Readiness folders or educational information.

G. LEAs may use funds for professional development for personnel involved in the Comprehensive Counseling and Guidance Program.

H. LEAs may use funds for the expenses of extended days or years which are required to run the Program.

I. LEAs may use funds for classroom guidance curriculum materials.

J. LEAs may use funds to pay for at least one secondary school counselor, per school, per year for membership in the American School Counselor Association (ASCA) to facilitate accessing research and resources for effective Program implementation and effective student interventions and outcomes.

K. LEAs shall not use funds to supplant current or existing personnel or programs.

L. The USOE may use no more than two percent of the total Comprehensive Counseling and Guidance Program funding to provide SEOP/Plan for College and Career Readiness development and Program management.

R277-462-7. Variances, Accountability and Reporting.

A. New schools that are created from schools that have AdvancED accreditation and USOE Comprehensive Counseling and Guidance Program approval may qualify for Comprehensive Counseling and Guidance Program funding under this rule in the schools' first year of operation.

B. New LEA schools not meeting the requirements of R277-462-5A may receive Comprehensive Counseling and Guidance Program funding following two years of planning, training and Program implementation.

C. USOE Data Gathering

(1) The USOE shall gather data annually in October from LEAs regarding the number and assignments of school counselors.

(2) The USOE shall use the data to determine LEA compliance with this rule, including required ratios.

D. The USOE shall monitor the Program statewide and prepare an annual report for the Legislature and the Board including data and compliance information.

E. LEAs shall certify on an annual basis that previously qualified schools continue to meet the Program criteria and provide the USOE with data and information on the Program upon request.

**KEY: public education, counselors
August 7, 2014
Notice of Continuation June 10, 2014**

**Art X Sec 3
53A-15-201
53A-17a-131.8**

R277. Education, Administration.**R277-463. Class Size Average and Pupil-Teacher Ratio Reporting.****R277-463-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Course" means the subject matter taught to students.
- (1) Elementary courses are designated by grade level.
- (2) Secondary courses are determined by course content.
- C. "EL" means English Learner.
- D. "Individual class" means a group of students organized for instruction and assigned to one or more teachers or other staff members for a designated time period. A class may include students from multiple grades or may include students taking multiple courses and still shall be considered a single class for purposes of class size reporting. An individual class shall be determined from course data submitted to the USOE using a combination of course elements such as CACTUS identification number, teacher of record, class period, term of student enrollment, and course cycle.
- E. "LEA" means a local education agency, including local school boards/public school district or charter school.
- F. "Pupil" means a student enrolled in a public school as of October 1 of the reported school year.
- G. "Teacher" for purposes of this rule means a full-time equivalent licensed educator, such as a regular classroom teacher, a school-based specialist, and a special education teacher.
- H. "USOE" means the Utah State Office of Education.

R277-463-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, Section 53A-1-301 which directs the Board to report average class sizes and pupil-teacher ratios, Section 53A-3-602.5 which directs the Board to establish rules for uniform class size reporting, 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 uniform class size and pupil-teacher ratio reporting procedures, including definitions and codes.

R277-463-3. Class Size Average for Elementary Classes.

- A. LEAs shall report student level course data providing sufficient course information to determine the number of students in individual classes. Classes with students in multiple grades shall be calculated as one class. Extended day classes in which one portion of the class arrives early and the other portion stays late will be calculated as one class.
- B. Average class size shall be calculated by grade. Special education, EL, online, and other non-traditional classes shall be excluded from class size average calculations.
- C. State- and district-level class sizes shall be derived from the median of school-level class sizes.

R277-463-4. Class Size Average for Secondary Classes.

- A. LEAs shall report student level course data providing sufficient course information to determine the number of students in individual classes. Classes including students enrolled in multiple courses shall be calculated as one class.
- B. Average class size shall be calculated for core language arts, mathematics, and science courses. Special education, EL, online, and other non-traditional classes will be excluded from class size averages.
- C. State- and district-level class sizes shall be derived from taking the median of school-level class sizes.

R277-463-5. Pupil-Teacher Ratio Calculation.

- A. Pupil-teacher ratios shall be calculated by school. The

pupil-teacher ratio for each school shall be calculated by dividing the number of enrolled pupils by the number of full-time equivalent teachers assigned to the school.

B. District-level ratios shall be derived by taking the median of school-level ratios.

C. State-level ratios for charter schools and traditional schools shall be derived from taking the median of school-level data.

R277-463-6. Reporting Format and Timeline.

School, district and state-level ratios and class size averages shall be reported to the public as required under Section 53A-1-301.

KEY: public schools, enrollment reporting, class size average reporting, pupil-teacher ratio reporting**August 7, 2014****Notice of Continuation June 10, 2014****Art X Sec 3****53A-1-301****53A-3-602.5****53A-1-401(3)**

R277. Education, Administration.**R277-470. Charter Schools - General Provisions.****R277-470-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Charter school authorizers" means entities that authorize a charter school under Section 53A-1a-501.3(2).
- C. "Charter schools" means schools acknowledged as charter schools by charter school authorizers under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.
- D. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.
- E. "ESEA" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.
- F. "Expansion" means a proposed increase of students or adding grade level(s) in an operating charter school at a single location.
- G. "Mentor," for purposes of the mentoring program, means an individual or organization with expertise or demonstrated competence, willing to advise charter schools, approved by the State Charter School Board to participate in the mentoring program.
- H. "Mentoring program," for purposes of this rule, means the State Charter School Board mentoring program.
- I. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.
- J. "State Charter School Board" means the board designated in Section 53A-1a-501.5.
- K. "USOE" means the Utah State Office of Education.
- L. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.
- M. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education local education agencies (LEAs) and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

R277-470-2. Authority and Purpose.

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.
- B. The purpose of this rule is to provide directions to charter schools for federal funds and startup and implementation funding. The rule also provides criteria for a charter school mentoring program and additional charter school-specific directives.

R277-470-3. Maximum Authorized Charter School Students.

- A. Local school boards and institutions of higher education may approve charter schools by notifying the Board by October 1 of the state fiscal year one year prior to opening of proposed charter schools, including authorized numbers of

students and other information as required in Sections 53A-1a-515 and 53A-1a-521.

- B. The Board, in consultation with the State Charter School Board and charter school authorizers, may approve schools, expansions and satellite charter schools for the total number of students authorized under Sections 53A-1a-502.5 and 53A-1a-501.9.
- C. The number of students requested from all charter school authorizers shall be considered as students are allocated and approved by the Board.

R277-470-4. Charter Schools and ESEA Funds.

- A. Charter schools that desire to receive ESEA funds shall comply with the requirements of R277-470-4.
- B. To obtain its allocation of ESEA formula funds, a charter school shall complete all appropriate sections of the Utah Consolidated Application (UCA) and identify its economically disadvantaged students in the October UTREx submission.
- C. If the school does not operate a federal school lunch program, the school:
- (1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or
 - (2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.
- D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

R277-470-5. Charter School Start-up and Implementation Grants.

- A. Charter schools that desire to receive State Charter School Board start-up and implementation grant funds shall comply with the requirements of R277-470-5.
- B. To receive a State Charter School Board start-up or implementation grant, a charter school shall be eligible and meet the requirements consistent with Section 53A-1a-507. New schools and satellite schools are eligible; school expansions are not eligible.
- C. Eligible charter schools shall complete an application and may be awarded a grant for no more than 36 months.
- D. Only schools that have not received state start-up or implementation grant funds in prior years are eligible.
- E. The State Charter School Board shall determine amounts and conditions for distribution of state start-up or implementation grant funds.
- F. Grant funds may only be used for allowable expenditures as provided by the State Charter School Board.
- G. Grant recipients shall participate in monitoring activities. Grant recipients shall provide monitoring information to the USOE, as directed.
- H. Charter schools shall repay grant funds to the State Charter School Board if recipients change to non-charter status within ten years of receiving grant funds. An exception may be made for schools that convert status due to either federal or state law requirements for academic purposes.

R277-470-6. Charter School Mentoring Program.

- A. The State Charter School Board shall identify critical mentoring needs of charter schools and, through an RFP application process, allocate mentoring funds to one or more qualified individuals or organizations to meet identified needs.
- B. Mentoring program participants shall provide information to the USOE as requested.
- C. The State Charter School Board shall:
- (1) receive an annual program report from participating

mentors and charter schools; and
(2) evaluate the mentoring program annually.

53A-1a-501.3
53A-1a-501.9
53A-1a-513.5

R277-470-7. Charter School Parental Involvement.

A. Charter schools shall encourage and provide opportunities for parental involvement in management decisions at the school level.

B. Charter schools that elect to receive School LAND Trust funds shall have a committee consistent with R277-477-3A.

R277-470-8. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

D. School districts may provide transportation or transportation information to charter school students and their parents who participate in transportation by the school district as guests. Charter schools/charter school students may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-9. Miscellaneous Provisions.

A. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety or welfare of students consistent with Section 53A-1a-510(3).

(1) Individuals making reports about threats shall report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with Sections 62A-4a-403 and 53A-11-605(3)(a).

(2) Additionally, individuals may report threats to the health, safety or welfare of students to the charter school governing board.

- (a) reports shall be made in writing;
- (b) reports shall be timely;
- (c) anonymous reports shall not be reviewed further.

(3) Charter school governing boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Charter school governing boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

B. The Board shall have authority for final approval of all charter schools that receive minimum school program funds. All charter schools shall be subject to accountability standards established by the Board and to monitoring and auditing by the Board.

KEY: education, charter schools
August 7, 2014
Notice of Continuation August 2, 2013

Art X, Sec 3
53A-1a-515
53A-1a-505
53A-1a-513
53A-1-401(3)
53A-1a-510
53A-1a-519
53A-1a-501.5
53A-1-301
53A-1a-502.5
53-8-211
62A-4a-403
53A-11-605
53A-1a-522
53A-1a-521

R277. Education, Administration.**R277-472. Charter School Student Enrollment and Transfers and School District Capacity Information.****R277-472-1. Definitions.**

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

B. "Below capacity at the elementary and secondary level" making the grade level available for transfer students from charter schools outside of the window provided for in Section 53A-1a-506.5(3) is established if the grade level or program is less than 100 percent of the district, school, or grade level average.

(1) A special program is "below capacity" or available for transfer students from charter schools if the number of assigned students is less than the designated number of students determined by valid, research-based, or federally established standards.

(2) An entire elementary or secondary school is "below capacity" if the district determines that the average class size, using calculations of classes and courses in R277-472-3, is less than 100 percent of the district elementary or secondary average class size.

C. "Elementary (K-6) class size" means the number of students with a primary assignment to a specific teacher.

(1) An extended day class in which a portion of the class arrives early and the other portion stays late shall be counted as one class.

(2) Elementary class size shall include all special education students who participate in all or part of the school day excluding those students assigned to self-contained special education classes.

D. "Secondary (7-12) class size" means the secondary school's calculation for each language arts, mathematics, and science course that is typically taught multiple times in the school day, such as 8th grade English, Algebra 1, Earth Systems.

R277-472-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-506.5(2) which directs the Board to make rules for students transferring between charter schools and district schools and enrolling and withdrawing from charter schools, 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 provide procedures for students transferring between district public schools and charter schools; to define capacity in district public schools to allow for transfers into district schools from charter schools; to provide notice to parents and students of schools that have space available.

R277-472-3. Class Size Calculations.

A. Elementary class size: Each school district (or school as determined by the school district) shall calculate an average class size for each grade level. Schools shall derive this calculation from the total number of students in a given grade divided by the number of full time licensed teachers assigned to that grade.

(1) Schools shall not count students assigned to multiple grade level classes (and their respectively assigned teachers) in determining average class size for a grade level.

(2) Schools shall calculate elementary classes that group students in programs other than by grade level, such as gifted and talented or English Learner programs, as a class if students participate for the entire instructional day.

(a) If schools count students that participate in special programs for part of the school day, schools shall count the students as part of their age-appropriate grade level (together

with respective teachers) for purposes of this calculation.

(b) If multiple classes of special programs exist (including self-contained special education classes), a school shall determine an average class size for special programs consistent with state, federal and program standards.

B. Elementary school size: Each school district (or school) shall calculate a school-wide average class size by dividing the total full time teachers assigned to direct teaching situations by the total number of students receiving instruction.

(1) Schools shall not include self-contained special education students and teachers in this calculation.

(2) Schools shall include all other special education students and teachers.

C. Secondary average class size: Each school district (or secondary school as determined by the district) shall calculate an average class size for each language arts, mathematics and science course that is taught multiple times during a typical school day by dividing the total number of full time teachers assigned to direct teaching situations by the total number of students enrolled.

(1) Schools shall not include self-contained special education students and teachers in this calculation.

(2) Schools shall include all special education students, other than full-time self-contained students, in the calculation.

D. District average: Each school district shall calculate the district-wide average class size for each grade level, each elementary program that enrolls students across grade levels and for each language arts, mathematics, and science course.

(1) School districts shall derive the calculation by dividing the total number of full time teachers (FTEs) assigned to direct teaching situations by the total number of fully enrolled students.

(2) School districts shall derive all calculations using October 1 enrollment and employment data.

E. In a school district with only one elementary or secondary school, or only one class of any subject or grade level, school districts may calculate the average class size for an entire school or the entire school district by averaging all the classes in the school or the school district. The school district may then determine that any class size less than the school district or school average class size is below capacity.

R277-472-4. School District School Capacity Information.

A. School districts shall provide and post the following information to facilitate transfer of students on school district or school websites:

(1) Elementary schools within the school district that are below capacity and available for transfer students;

(2) Grade levels and special programs within elementary schools that are below capacity and available for transfer students;

(3) Secondary schools that are below capacity and available for transfer students based on calculated capacity of language arts, science and mathematics; and

(4) Special programs within secondary schools that are below capacity and available for transfer students.

B. Below capacity standards for individual schools, grade levels, courses or programs do not apply if a school has documentation that the school community council in a public meeting has designated more than one-half of a school's school LAND trust annual allotment to reduce class size in a specific school, grade level, program or course.

R277-472-5. Application Procedures for Students Entering and Exiting Charter Schools.

A. Each charter school shall post on its website information and procedures required under Section 53A-1a-506.5(2).

B. Each charter school shall develop and post admissions

procedures for the charter school including:

- (1) Lottery dates and procedures;
- (2) Admission forms;
- (3) School calendar;
- (4) Non-discrimination assurances;
- (5) A clear explanation, including timelines required in the law and provided in individual charter school policies, of student transfer procedures from a charter school to another charter school or to a district school;
- (6) A readily accessible transfer form; and
- (7) Assurance and parent signature that student has been admitted to only one public school.

R277-472-6. Enrollment of Transferring Charter School Students in District Schools.

A. A school district shall enroll as soon as possible, but no later than two weeks after specific formal parental request, a student who is a resident of a school district, who desires to transfer from a charter school to the resident school after June 30 and who submits enrollment information consistent with all school district students in a district school that is below capacity.

B. Schools may limit students who are transferring from a charter school to a district school after June 30 for the upcoming school year to schools, grade levels, programs and courses that have space available or are below capacity at the district schools.

C. A school district shall not require enrollment procedures or forms from students moving from a charter school to a district school that differ in any way from enrollment procedures/forms required for district students if the charter school students are leaving a charter school after the final grade level offered by the charter school.

D. Parents/Students who are enrolled at charter schools and are seeking enrollment at district schools should check with the school district office (or school principal if designated by the school district) for official current capacity information about schools, grade levels, programs or courses before leaving a charter school and forfeiting a charter school enrollment right.

E. If a school changes the location of services for a student with disabilities, the new location may only be considered a change of placement as determined by the student's IEP and consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, Part B.

F. Consistent with Section 53A-11-904(3), schools may deny enrollment to students in a public school if they have been expelled from another public school.

G. Schools may deny students' enrollment in a public school if they leave a public school with disciplinary procedures pending at the previous Utah public school until previous allegations have been resolved.

H. Charter schools and district schools shall notify each other of student enrollment consistent with Section 53A-1a-506.5(4).

KEY: charter schools, students, transfers

August 7, 2014

Notice of Continuation June 10, 2014

Art X, Sec 3

53A-1a-506.5(2)

53A-1-401(3)

R277. Education, Administration.**R277-480. Charter School Revolving Account.****R277-480-1. Definitions.**

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

B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515, by the Board under Section 53A-1a-505, and by boards of trustees of higher education institutions under Section 53A-1a-501.3.

C. "Charter School Revolving Account" means a restricted account created within the Uniform School fund to provide assistance to charter schools to:

(1) meet school building construction and renovation needs; and

(2) pay for expenses related to the start up of a new charter school or the expansion of an existing charter schools.

D. "Charter School Revolving Account Committee" means the committee established by the Board under Section 53A-1a-522(6).

E. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.

F. "Urgent facility need," as provided for in Section 53A-1a-522(5), means an unexpected exigency that affects the health and safety of students such as:

(1) to satisfy an unforeseen condition that precludes a school's qualification for an occupancy permit; or

(2) to address an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health, or public school laws or Board rules.

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

R277-480-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-522(2)(b) which requires the Board to administer the Charter School Revolving Account, 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 procedures for administering the Charter School Revolving Account to determine membership of the Charter School Revolving Account Committee, and to determine loan amounts and loan repayment conditions.

R277-480-3. Charter School Revolving Account Committee.

A. The Board shall establish a Charter School Revolving Account Committee consistent with Section 53A-1a-522(6).

B. The State Charter School Board shall submit a list of at least three nominees per vacancy who meet the requirements of Section 53A-1a-522(6)(b) for appointment by the Board consistent with timelines established by the Board.

C. The Board shall annually accept nominations of individuals provided by the State Charter School Board who meet the qualifications of 53A-1a-522(6)(b).

D. The Board may only select Charter School Revolving Account Committee members who satisfy conditions of Section 53A-1a-522(6).

E. Charter School Revolving Account Committee members appointed by the Board after May 1, 2010 shall be appointed for two year terms.

F. The USOE Charter School Director or designee shall be a non-voting Charter School Revolving Account Committee member.

R277-480-4. Charter School Revolving Account Application and Conditions.

A. The Charter School Revolving Account Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Section 53A-

1a-522, including urgent facility need criteria.

B. The Charter School Revolving Account Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful, including considerations of Section 53A-1a-522(5), in making final recommendations to the Superintendent, the State Charter School Board and the Board.

C. The Charter School Revolving Account Committee shall accept applications for loans on an ongoing basis, subject to eligibility criteria and availability of funds.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Charter School Revolving Account Committee and repayment schedule of the loan designated by the Charter School Revolving Account Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-1a-522 and the purpose of the approved charter;

(d) agrees to any and all inspections, audits or financial reviews ordered by the Charter School Revolving Account Committee or the Board; and

(e) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

D. The Charter School Revolving Account Committee shall establish terms and conditions for loan repayment, consistent with Section 53A-1a-522. Terms shall include:

(1) A tiered schedule of loan fund distribution:

(a) 50 percent (up to \$150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25 percent (up to \$75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(2) The loan amount to a charter school board awarded under Section 53A-1a-522 shall not exceed:

(a) \$1,000 per pupil based on the most recent October 1 enrollment count for operational schools; or

(b) \$1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) \$300,000 of the total of all current loan awards by the Board to a charter school board.

R277-480-5. Charter School Revolving Account Committee Recommendations and Board Approval.

A. The Charter School Revolving Account Committee shall make recommendations to the State Charter School Board and the Board only upon receipt of complete and satisfactory information from the applicant and upon a majority recommendation from the Charter School Revolving Account Committee.

B. The submission of intentionally false, incomplete or inaccurate information from a loan applicant may result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

C. The Board staff and State Charter Board staff shall review recommendations from the Charter School Revolving Account Committee.

D. Final recommendations from the Charter School Revolving Account Committee shall be submitted to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Charter School Revolving Account Committee.

E. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Charter School Revolving Account Committee.

F. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

**KEY: charter schools, revolving account
August 7, 2014**

Notice of Continuation June 10, 2014

**Art X, Sec 3
53A-1a-522(2)(b)
53A-1-401(3)**

R277. Education, Administration.**R277-602. Special Needs Scholarships - Funding and Procedures.****R277-602-1. Definitions.**

A. "Agreed upon procedure" for purposes of this rule means the agreed upon procedure as provided for under Section 53A-1a-705(1)(b)(i)(B).

B. "Annual assessment" for purposes of this rule means a formal testing procedure carried out under prescribed and uniform conditions that measures students' academic progress, consistent with Section 53A-1a-705(1)(f).

C. "Appeal" for purposes of the rule means an opportunity to discuss/contest a final administrative decision consistent with and expressly limited to the procedures of this rule.

D. "Assessment team" means the individuals designated under Section 53A-1a-703(1).

E. "Audit of a private school" for purposes of this rule means a financial audit provided by an independent certified public accountant, as provided under Section 53A-1a-705(1)(b).

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

G. "Days" means school days unless specifically designated otherwise in this rule.

H. "Disclosure to parents" for purposes of this rule means the express acknowledgments and acceptance required under Section 53A-1a-704(5) as part of parent application available through schools districts.

I. "Eligible student" for purposes of this rule means:

(1) the student's parent resides in Utah;

(2) the student has a disability as designated in 53A-1a-704(2)(b); and

(3) the student is school age.

(4) Eligible student also means that the student was enrolled in a public school in the school year prior to the school year in which the student will be enrolled in a private school, has an IEP and has obtained acceptance for admission to an eligible private school; and

(5) The requirement to be enrolled in a public school in the year prior and have an IEP does not apply if:

(a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and

(b) an assessment team is able to readily determine with reasonable certainty that the student has a disability and would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the student enrolled in a public school.

J. "Enrollment" for purposes of this rule means that the student has completed the school enrollment process, the school maintains required student enrollment information and documentation of age eligibility, the student is scheduled to receive services at the school, the student attends regularly, and has been accepted consistent with R277-419 and the student's IEP.

K. "Final administrative action" for purposes of this rule means the concluding action under Section 53A-1a-701 through 53A-1a-710 and this rule.

L. "Individual education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Board Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

M. "Private school that has previously served students with disabilities" means a school that:

(1) has enrolled students within the last three years under the special needs scholarship program;

(2) has enrolled students within the last three years who have received special education services under Individual Services Plans (ISP from the school district where the school is

geographically located; or

(3) can provide other evidence to the Board that is determinative of having enrolled students with disabilities within the last three years.

N. "Special Needs Scholarship Appeals Committee (Appeals Committee)" means a committee comprised of:

(1) the special needs scholarship coordinator;

(2) the USOE Special Education Director;

(3) one individual appointed by the Superintendent or designee; and

(4) two Board-designated special education advocates.

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

P. "Warrant" means payment by check to a private school.

R277-602-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, Section 53A-1a-706(5)(b) which provides for Board rules to establish timelines for payments to private schools, Section 53A-3-410(6)(b)(i)(c) which provides for criminal background checks for employees and volunteers, Section 53A-1a-707 which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to outline responsibilities for parents/students, public schools, school districts or charter schools, and eligible private schools that accept scholarships from special needs students and the State Board of Education in providing choice for parents of special needs students who choose to have their children served in private schools and in providing accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-3. Parent/Guardian Responsibilities.

A. If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application, available from the USOE or online, to the school district or charter school within which the parent/guardian resides.

(1) The parent shall complete all required information on the application and submit the following documentation with the application form, consistent with the timeline provided in Section 53A-1a-704(4):

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age before September 2 of the year of enrollment, consistent with Section 53A-3-402(6);

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705;

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

B. If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application to the school district

in which the private school is geographically located (school district responsible for child find under IDEA, Sec. 612(a)(3)).

(1) The parent shall complete all required information on the application and submit the following documentation with application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age, before September 2 of the year of enrollment;

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705.

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) The parent shall participate in an assessment team meeting to determine if a student would qualify for special education services and the level of services for which the student would be eligible if enrolled in a public school.

C. Payment provisions - Upon review and receipt of documentation that verifies a student's admission to, or continuing enrollment and attendance at, a private school, the Board shall make scholarship payments quarterly in equal amounts in each school year in which a scholarship is in force.

D. A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6).

E. The parent shall, consistent with Section 53A-1a-706(8), endorse the warrant received by the private school from the USOE no more than 15 school days after the private school's receipt of the warrant.

F. The parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student or the student misses more than 10 consecutive days at which point the Board may modify the payment to the private school consistent with R277-419-1J.

G. The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

H. The parent shall notify the Board in writing by March 1 annually to indicate the student's continued enrollment.

R277-602-4. School District or Charter School Responsibilities.

A. The school district or charter school that receives the student's scholarship application consistent with Section 53A-1a-704(4) shall forward applications to the Board no more than 10 days following receipt of the application.

B. The school district or charter school that received the student's scholarship application shall:

(1) receive applications from students/parents;

(2) verify enrollment of the student seeking a scholarship in previous school year within a reasonable time following contact by the Board;

(3) verify the existence of the student's IEP and level of service to the USOE within a reasonable time;

(4) provide personnel to participate on an assessment team to determine:

(a) if a student who was previously enrolled in a private school that has previously served students with disabilities would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the child enrolled in a public school for purposes of determining the scholarship

amount consistent with Section 53A-1a-706(2);

(b) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

C. Special needs scholarship students shall not be enrolled in public or charter schools for dual enrollment or extracurricular activities, consistent with the parents'/guardians' assumption of full responsibility for students' services under Section 53A-1a-704(5).

D. School districts and charter schools shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

E. School district and charter school notification to students with IEPs:

(1) School districts and charter schools shall provide written notice to parents or guardians of students who have an IEP of the availability of a scholarship to attend a private school through the Special Needs Scholarship Program through state special education monitoring procedures.

(2) The written notice shall consist of the following statement: School districts and charter schools are required by Utah law, 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

(3) The written notice shall be provided no later than 30 days after the student initially qualifies for an IEP.

(4) The written notice shall be provided annually no later than February 1 to all students who have IEPs.

(5) The written notice shall include the address of the Internet website maintained by the Board that provides prospective applicants and their parents with program information and application forms for the Carson Smith Scholarship Program.

(6) A school district, school within a school district, or charter school that has an enrolled student who has an IEP shall post the address of the Carson Smith Internet website maintained by the Board on the school district's or school's website, if the school district or school has one.

R277-602-5. State Board of Education Responsibilities.

A. The Board shall provide applications, containing acknowledgments required under Section 53A-1a-704(5), for parents seeking a special needs scholarship online, at the Board offices, at school district or charter school offices, and at charter schools no later than April 1 prior to the school year in which admission is sought.

B. The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 days after the private school submits an application and completed documentation of eligibility. The Board may:

(1) provide reasonable timelines within the application for satisfaction of private school requirements;

(2) issue letters of warning, require the school to take corrective action within a time frame set by the Board, suspend the school from the program consistent with Section 53A-1a-708, or impose such other penalties as the Board determines appropriate under the circumstances.

(3) establish appropriate consequences or penalties for private schools that:

(a) fail to provide affidavits under Section 53A-1a-708;

(b) fail to administer assessments, fail to report assessments to parents or fail to report assessments to assessment team under Section 53A-1a-705(1)(f);

(c) fail to employ teachers with credentials required under Section 53A-1a-705(g);

(d) fail to provide to parents relevant credentials of teachers under Section 53A-1a-705(h);

(e) fail to require completed criminal background checks under Section 53A-3-410(2) and (3) and take appropriate action consistent with information received.

(4) initiate complaints and hold administrative hearings, as appropriate, and consistent with R277-602.

C. The Board shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

D. Information about approved scholarships and availability and level of funding shall be provided to scholarship applicant parents/guardians no later than March 1 of each year.

E. The Board shall mail scholarship payments directly to private schools as soon as reasonably possible consistent with Section 53A-1a-706(8).

F. If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Section 53A-1a-706(1)(c)(i).

G. The Board shall verify and cross-check, using USOE technology services, special needs scholarship student enrollment information consistent with Section 53A-1a-706(7).

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

A. Private schools shall submit applications by March 1 prior to the school year in which it intends to enroll scholarship students.

B. Applications and appropriate documentation from private schools for eligibility to receive special needs scholarship students shall be provided to the USOE on forms designated by the USOE consistent with Section 53A-1a-705(3).

C. Private schools shall satisfy criminal background check requirements for employees and volunteers consistent with Section 53A-3-410.

D. Private schools that seek to enroll special needs scholarship students shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Sections 53A-1a-704(3) and 53A-1a-704(6).

(1) Meetings shall be scheduled at times and locations mutually acceptable to private schools, applicant parents and participating public school personnel.

(2) Designated private school and public school personnel shall maintain documentation of the meetings and the decisions made for the students.

(3) Documentation regarding required assessment team meetings, including documentation of meetings for students denied scholarships or services and students admitted into private schools and their levels of service, shall be maintained confidentially by the private and public schools, except the information shall be provided to the USOE for purposes of determining student scholarship eligibility, or for verification of compliance upon request by the USOE.

E. Private schools receiving scholarship payments under this rule shall provide complete student records in a timely manner to other private schools or public schools requesting student records if parents have transferred students under Section 53A-1a-704(7).

F. Private schools shall notify the Board within five days if the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student or the student misses more than 10 consecutive days of school.

G. Private schools shall satisfy health and safety laws and codes under Section 53A-1a-705(1)(d) including:

(1) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies and

(2) compliance with R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

H. An approved eligible private school that changes ownership shall submit a new application for eligibility to receive Carson Smith scholarship payments from the Board; the application shall demonstrate that the school continues to meet the eligibility requirements of R277-602.

(1) The application for renewed eligibility shall be received from the school within 60 calendar days of the change of ownership.

(2) Ownership changes on the date that an agreement is signed between previous owner and new owner.

(3) If the application is not received by the USOE within the 60 days, the new owner/school is presumed ineligible to receive continued Carson Smith scholarship payments from the USOE and, at the discretion of the Board, the USOE may reclaim any payments made to a school within the previous 60 days.

(4) If the application is not received by the USOE within 60 days after the change of ownership, the school is not an eligible school and shall submit a new application for Carson Smith eligibility consistent with the requirements and timelines of R277-602.

R277-602-7. Special Needs Scholarship Appeals.

A. A parent or legal guardian of an eligible student or a parent or legal guardian of a prospective eligible student may appeal only the following actions under this rule:

(1) alleged USOE violations of Section 53A-1a-701 through 710 or R277-602; or

(2) alleged USOE violations of required timelines.

B. The Appeals Committee may not grant an appeal contrary to the statutory provisions of Section 53A-1a-701 through 53A-1a-710.

C. An appeal shall be submitted in writing to the USOE Special Needs Scholarship Coordinator at: Utah State Office of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200.

(1) The appeal opportunity is expressly limited to an appeal submitted in writing for USOE consideration. The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.

(2) Appellants have no right to additional elements of due process beyond the specific provisions of this rule.

(3) Nothing in the appeals process established under R277-602 shall be construed to limit, replace or adversely affect parental appeal rights available under IDEA.

D. Appeals shall be made within 15 days of written notification of the final administrative decision.

E. Appeals shall be considered by the Appeals Committee within 15 days of receipt of the written appeal.

F. The decision of the Appeals Committee shall be transmitted to parents no more than ten days following consideration by the Appeals Committee.

G. Appeals shall be finalized as expeditiously as possible in the joint interest of schools and students involved.

H. The Appeals Committee's decision is the final administrative action.

**KEY: special needs students, scholarships
August 7, 2014**

Notice of Continuation June 10, 2013 **Art X Sec 3
53A-1a-706(5)(b)
53A-3-410(6)(i)(c)
53A-1a-707
53A-1-401(3)**

R277. Education, Administration.**R277-710. Intergenerational Poverty Interventions in Public Schools.****R277-710-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Eligible student" means a student who is classified as a child affected by intergenerational poverty in grades K-12 of the public school system.
- C. "Intergenerational poverty (IGP)" means poverty in which two or more successive generations of a family continue in the cycle of poverty and government dependence. Intergenerational poverty does not include situational poverty as defined in Section 35A-9-102.
- D. "LEA" means a local education agency, including local school boards/public districts and charter schools.
- E. "Program" means the Intergenerational Poverty Interventions Grant Program that provides educational services outside of the regular school day (afterschool program).
- F. "USOE" means the Utah State Office of Education.

R277-710-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-171(4) which directs the Board to accept proposals and award grants under the Program.

B. The purpose of this rule is to distribute funds to LEAs to provide out-of-school educational services that assist students affected by intergenerational poverty in achieving academic success.

C. This rule provides eligibility criteria, provides minimum application criteria and timelines, and provides for USOE oversight and reporting.

R277-710-3. Grant Eligibility.

A. Only local education agencies (LEAs) are eligible to apply for funds under this program. LEAs, in designing their program services, may collaborate with community-based organizations that provide quality afterschool programs.

B. The Board shall give priority to applicants that have a significant number or percentage of students affected by intergenerational poverty.

C. These funds are intended to provide supplemental services beyond what is already available through state and local funding.

(1) For LEAs with schools that already have afterschool programs, the funds may be used to augment the amount or intensity of services to benefit students affected by IGP. Existing after school program applicants may apply for grants in the range of \$30,000 to \$50,000 per school year.

(2) For LEAs with schools that do not have existing afterschool programs, the funds may be used to establish quality afterschool programs. New after school program applicants may apply for grants in the range of \$100,000-\$150,000 per school year.

D. LEAs participating in this program serving students in grades K-6 may be eligible to apply for additional federal afterschool funding through the Department of Workforce Services.

R277-710-4. Program Requirements.

Successful applicants shall design programs that include the following minimum components:

A. a definition of the level of administrative support and leadership at the LEA to effectively implement, monitor, and evaluate the program.

B. an explanation of how the LEA will provide adequate supervision and support to successfully implement or increase

programs at the school level.

C. a summary of a needs assessment conducted by the LEA to determine the academic needs and interests of participating students and their families.

D. the identification of intended outcomes of the program and how these outcomes will be measured.

E. an explanation of how the LEA/school will provide services to improve the academic achievement of children affected by intergenerational poverty.

F. a commitment to assess program quality and effectiveness and make changes as needed.

G. an outline of the scope of services (days of the week, number of hours, and number of weeks).

H. an explanation of the LEA's strategy for coordinating with and engaging the Department of Workforce Services to provide services for the LEA's eligible students.

I. an explanation of how the LEA will work with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts to provide services to the LEA's eligible students.

J. the identification of IGP eligible students (categorized by age), and schools in which the LEA plans to develop programs with the grant money.

K. an annual program budget and identification of the estimated cost per student.

L. Establishment and maintenance of data systems that inform program decisions and annual reporting requirements.

R277-710-5. Application Process.

A. The USOE shall solicit competitive grants from LEAs, score the grants and make funding recommendations to the Board.

B. LEAs may apply for this grant through the Utah Consolidated Application (UCA).

C. Timeline:

(1) Application deadline for the 2014-15 school year is June 16, 2014.

(2) The USOE shall convene a panel of application reviewers that demonstrate no conflicts of interest. The panel members shall score applications and the panel shall make recommendations for funding to the Board.

(3) Application review for the 2014-15 school year shall be completed by June 23, 2014.

(4) The USOE shall provide recommendations of successful grant recipients to the Board no later than July 1, 2014.

D. The Board shall notify successful applicants no later than August 5, 2014.

E. The USOE, in future years, subject to continuing appropriations, may adjust the timeline to allow LEAs more time to propose programs and complete applications.

R277-710-6. USOE Oversight and Reporting Requirements.

A. The USOE shall provide adequate oversight in the administration of the IGP program to include:

(1) conducting the annual application process and awarding funds;

(2) monitoring program implementation; and

(3) gathering and reporting required data.

B. To effectively administer the IGP program, the USOE shall reserve up to five percent of the IGP appropriation for administrative and evaluation purposes.

C. LEAs that receive grant money pursuant to this section shall annually provide to the Board information that is necessary for the Board's report to the Legislative Education Interim Committee and the Utah Intergenerational Welfare Reform Commission as required by Section 53A-17a-171(7).

D. The annual report required under Section 53A-17a-171(7) shall include:

(1) the progress of LEA programs in expending grant money;

(2) the progress of LEA programs in improving the academic achievement of children affected by intergenerational poverty; and

(3) the LEA's coordination efforts with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts.

**KEY: public schools, poverty, intervention
August 7, 2014**

**Art X Sec 3
53A-1-401(3)**

R277. Education, Administration.**R277-719. Standards for Selling Foods Outside of the Reimbursable Meal in Schools.****R277-719-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Competitive foods" as provided in 7 CFR 210, means all food and beverages, other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act, 42 U.S.C., and the Child Nutrition Act of 1966, available for sale to students on the school campus during the school day.
- C. "Eating area," for purposes of this rule, means the place where the reimbursable meal is served or eaten. In some schools, this may include the entire campus.
- D. "LEA" means a local education agency, including local school boards/public school district or charter school.
- E. "Nutrition Standards" are defined in 7 CFR 210.11 and are hereby incorporated by reference.
- F. "Reimbursable meal" means a meal which meets the requirements of 7 CFR 210, 211, 215, 220 or 225 which are incorporated by reference and can be claimed for payment.
- G. "School day" means the period from the midnight before, to 30 minutes after the end of the official school day.
- H. "School campus" means all areas of the property under the jurisdiction of the school that are accessible to students during the school day.
- I. "Unit" means per container, package or amount served.
- J. "USOE" means the Utah State Office of Education.
- K. "Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages.

R277-719-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-19-201(1) which allows the Board to set standards relating to the use of school lunch revenues, and Section 53A-1-402(1)(e) which requires the Board to establish rules concerning school productivity and cost effectiveness measures and federal programs.

B. The purpose of this rule is to outline requirements for LEA policies regarding foods sold outside of the reimbursable meal service.

R277-719-3. LEA Policies Regarding Vending Machines.

A. Each LEA shall develop and implement a policy for schools that choose to provide vending machines.

B. The policy shall include:

- (1) a requirement that all agreements for vending machines be in writing in a contract form approved by the local board of education or charter school governing board;
- (2) accepted uses of vending machine income; and
- (3) generally accepted accounting procedures, including periodic reports to the LEA of vending machine receipts and expenditures.

R277-719-4. LEA Policies Regarding Competitive Food Sales on Campus.

A. These nutrition standards apply to the sale of competitive food in all schools offering programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 on the school campus during the school day.

B. The profits from competitive foods shall accrue either to a non-profit school account or to the non-profit school food service account. Profits from competitive foods may not accrue to the benefit of a for-profit account or entity.

C. If the competitive food(s) were purchased using food service funds, the cost of the item shall be reimbursed to the food service account.

D. A competitive food item that is sold by an LEA or an employee or agent shall meet all the competitive food nutrient standards as outlined in 7 CFR 210.11. LEAs may use a Smart Snacks calculator, available online, to verify that food sold meets competitive food standards.

E. Foods which are exempt from the nutrition standards are listed in 7 CFR 210.11(c) - (m).

R277-719-5. Fundraising Using Food/Beverages.

A. These fundraising standards apply to school fundraising using food or beverages in all schools offering programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 on the school campus during the school day.

B. Competitive food and beverage items sold during the school day shall meet nutrition standards for competitive foods. A special exemption is allowed for the sale of food or beverages that do not meet the competitive food standards for the purpose of conducting infrequent school-sponsored fundraisers.

C. LEAs may hold specifically exempted fundraisers no more than three times per year per site, with each fundraiser lasting no longer than five consecutive school days.

(1) The superintendent or principal of the LEA or school shall designate an individual to maintain records of fundraisers at which foods and beverages that do not meet competitive food standards are sold.

(2) Career and Technical Education programs may make written requests for fundraisers, in addition to the three allowed in R277-519-5C, to the USOE Child Nutrition Program Director.

R277-719-6. LEA Wellness Policies.

A. Wellness policy requirements apply in all schools offering programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 on the school campus during the school day.

B. Each LEA participating in the National School Lunch Program or the School Breakfast Program shall establish a local school wellness policy for all schools under their jurisdiction. The written policy shall, at a minimum, include all the elements required in 7 CFR 210.30.

R277-719-7. Miscellaneous Provisions.

A. Schools not participating in the National School Lunch/Breakfast programs shall adopt a written policy for the sale of all foods that are not part of the meal service including vending, a la carte or other food sales. The policy shall apply to all foods sold anywhere on school grounds during the school day when school is in session in all areas of the school accessible to students.

B. The policies may use the definitions for competitive foods and wellness policies from 7 CFR 210.11 and 210.30.

C. The provisions of this rule shall become effective no later than August 8, 2014.

D. The superintendent or principal of the LEA or school shall designate an individual who shall provide documentation during audits to show compliance with this rule.

KEY: schools, foods, nutrition, vending machines**August 7, 2014****Notice of Continuation March 12, 2013****Art X Sec 3****53A-1-401(3)****53A-19-201(1)****53A-1-402(1)(e)**

R307. Environmental Quality, Air Quality.**R307-101. General Requirements.****R307-101-1. Foreword.**

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and

regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(8)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will

achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Condensable PM_{2.5}" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such

purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board, the director or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filterable PM_{2.5}" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

- (i) Salt Lake County, effective August 18, 1997; and
- (ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

- (i) Salt Lake City, effective March 22, 1999;
- (ii) Ogden City, effective May 8, 2001; and
- (iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

- (1) routine maintenance, repair and replacement;
- (2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;
- (4) use of an alternative fuel at a steam generating unit to

the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

- (a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

- (b) which the source is otherwise approved to use;
- (6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

- (7) any change in ownership at a source
- (8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

- (a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

- (b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

- (9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

- (a) the Utah State Implementation Plan; and
- (b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

- (a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

- (b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

- (c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum or reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

- (i) Hydrofluoric, sulfuric, or nitric acid plants;
 - (j) Petroleum refineries;
 - (k) Lime plants;
 - (l) Phosphate rock processing plants;
 - (m) Coke oven batteries;
 - (n) Sulfur recovery plants;
 - (o) Carbon black plants (furnace process);
 - (p) Primary lead smelters;
 - (q) Fuel conversion plants;
 - (r) Sintering plants;
 - (s) Secondary metal production plants;
 - (t) Chemical process plants;
 - (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
 - (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (w) Taconite ore processing plants;
 - (x) Glass fiber processing plants;
 - (y) Charcoal production plants;
 - (z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
 - (aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.
- "Modification" means any planned change in a source which results in a potential increase of emission.
- "National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).
- "Net Emissions Increase" means the amount by which the sum of the following exceeds zero:
- (1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and
 - (2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":
 - (a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.
 - (b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.
 - (c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.
 - (d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
 - (e) A decrease in actual emissions is creditable only to the extent that:
 - (i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 - (ii) It is enforceable at and after the time that actual construction on the particular change begins; and
 - (iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM2.5 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM2.5, and has been identified in the applicable implementation plan for PM2.5 as significant for the purpose of developing control measures. Specifically, PM2.5 precursors include SO₂, NO_x, and VOC.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Primary PM_{2.5}" means the sum of filterable PM_{2.5} and condensable PM_{2.5}.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered

to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

PM2.5: 10 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as solvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other

requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV-C) or threshold limit value-time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2013.

KEY: air pollution, definitions

August 7, 2014

Notice of Continuation May 8, 2014

19-2-104(1)(a)

R307. Environmental Quality, Air Quality.**R307-214. National Emission Standards for Hazardous Air Pollutants.****R307-214-1. Pollutants Subject to Part 61.**

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2013, are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the director.

R307-214-2. Sources Subject to Part 63.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2013, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the director, unless by federal law the authority is specific to the Administrator and cannot be delegated.

- (1) 40 CFR Part 63, Subpart A, General Provisions.
- (2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
- (3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
- (4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
- (5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
- (6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
- (7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.
- (8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.
- (9) 40 CFR Part 63, Subpart M, National Emission Standards for Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
- (10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
- (11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.
- (12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
- (13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
- (14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.
- (15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
- (16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.
- (17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.
- (18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum

Refineries.

- (19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
- (20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.
- (21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.
- (22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.
- (23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.
- (24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.
- (25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills.
- (26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.
- (27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.
- (28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.
- (29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.
- (30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).
- (31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).
- (32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).
- (33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.
- (34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).
- (35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
- (36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.
- (37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
- (38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
- (39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.
- (40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.
- (41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.
- (42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
- (43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers

and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of

Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PTTTT, National Emission Standards for Hazardous Air Pollutants for Engine Test

Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units.

(98) 40 CFR Part 63, Subpart WWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(99) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(100) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(101) 40 CFR Part 63 Subpart BBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(102) 40 CFR Part 63 Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(103) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(104) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(106) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(107) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(108) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(109) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(110) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(111) 40 CFR Part 63, Subpart OOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(112) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(113) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(114) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(115) 40 CFR Part 63, Subpart SSSSS, National

Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(116) 40 CFR Part 63, Subpart VVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(117) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(118) 40 CFR Part 63, Subpart WWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(119) 40 CFR Part 63, Subpart XXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Categories for Nine Metal Fabrication and Finishing Source Categories.

(120) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(121) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(122) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(123) 40 CFR Part 63, Subpart BBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(124) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(125) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(126) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

KEY: air pollution, hazardous air pollutant, MACT, NESHAP

August 7, 2014

19-2-104(1)(a)

Notice of Continuation November 8, 2012

R307. Environmental Quality, Air Quality.**R307-401. Permit: New and Modified Sources.****R307-401-1. Purpose.**

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part

of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the director determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the director may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The director will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the director, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the director for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the director.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the director will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307-401-5, the director will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the director will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the director's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A 30-day public comment period will be established.

(ii) A request to extend the length of the comment period, up to 30 days, may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iii) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iv) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(v) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the director to review plans and specifications.

(3) The director will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The director will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the director may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the director under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the director determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the director will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM₁₀, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a)(or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon

dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The director will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the director. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air contaminant emitted by the stationary source.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replacement process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the director before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the director will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the requirement to submit a notice of intent and obtain an approval order prior to construction if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the director is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the director no later than 60 days after the changes are made. The director will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the director to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the director. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the director or the director's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in R307-401-15(1) to the director prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.

(a) Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.

(b) Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.

(c) Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.

(d) The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements

of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the director prior to beginning the remediation project:

- (1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);
- (2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and
- (3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The director will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the director at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the director as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the director in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the director may revoke the approval order.

R307-401-19. General Approval Order.

(1) The director may issue a general approval order that would establish conditions for similar new or modified sources of the same type or for specific types of equipment. The general approval order may apply throughout the state or in a specific area.

(a) A major source or major modification as defined in R307-403, R307-405, or R307-420 for each respective area is not eligible for coverage under a general approval order.

(b) A source that is subject to the requirements of R307-403-5 is not eligible for coverage under a general approval order.

(c) A source that is subject to the requirements of R307-410-4 is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-4 was conducted.

(d) A source that is subject to the requirements of R307-410-5(1)(c)(ii) or (iii) is not eligible for coverage under a general approval order.

(2) A general approval order shall meet all applicable requirements of R307-401-8.

(3) The public notice requirements in R307-401-7 shall apply to a general approval order except that the director will advertise the notice of intent in a newspaper of statewide circulation.

(4) Application.

(a) After a general approval order has been issued, the owner or operator of a proposed new or modified source may apply to be covered under the conditions of the general approval

order.

(b) The owner or operator shall submit the application on forms provided by the director in lieu of the notice of intent requirements in R307-401-5 for all equipment covered by the general approval order.

(c) The owner or operator may request that an existing, individual approval order for the source be revoked, and that it be covered by the general approval order.

(d) The owner or operator that has applied to be covered by a general approval order shall not initiate construction, modification, or relocation until the application has been approved by the director.

(5) Approval.

(a) The director will review the application and approve or deny the request based on criteria specified in the general approval order for that type of source. If approved, the director will issue an authorization to the applicant to operate under the general approval order.

(b) The public notice requirements in R307-401-7 do not apply to the approval of an application to be covered under the general approval order.

(c) The director will maintain a record of all stationary sources that are covered by a specific general approval order and this record will be available for public review.

(6) Exclusions and Revocation.

(a) The director may require any source that has applied for or is authorized by a general approval order to submit a notice of intent and obtain an individual approval order under R307-401-8. Cases where an individual approval order will be required include, but are not limited to, the following:

(i) the director determines that the source does not meet the criteria specified in the general approval order;

(ii) the director determines that the application for the general approval order did not contain all necessary information to evaluate applicability under the general approval order;

(iii) modifications were made to the source that were not authorized by the general approval order or an individual approval order;

(iv) the director determines the source may cause a violation of a national ambient air quality standard; or

(v) the director determines that one is required based on the compliance history and current compliance status of the source or applicant.

(b)(i) Any source authorized by a general approval order may request to be excluded from the coverage of the general approval order by submitting a notice of intent under R307-401-5 and receiving an individual approval order under R307-401-8.

(ii) When the director issues an individual approval order to a source subject to a general approval order, the applicability of the general approval order to the individual source is revoked on the effective date of the individual approval order.

(7) Modification of General Approval Order. The director may modify, replace, or discontinue the general approval order.

(a) Administrative corrections may be made to the existing version of the general approval order. These corrections are to correct typographical errors or similar minor administrative changes.

(b) All other modifications or the discontinuation of a general approval order shall not apply to any source authorized under previous versions of the general approval order unless the owner or operator submits an application to be covered under the new version of the general approval order. Modifications under R307-401-19(7)(b) shall meet the public notice requirements in R307-401-19(3).

(c) A general approval order shall be reviewed at least every three year. The review of the general approval order shall follow the public notice requirements of R307-401-19(3).

(8) Modifications at a source covered by a general approval order. A source may make modifications only as authorized by

R307. Environmental Quality, Air Quality.
R307-410. Permits: Emissions Impact Analysis.
R307-410-1. Purpose.

This rule establishes the procedures and requirements for evaluating the emissions impact of new or modified sources that require an approval order under R307-401 to ensure that the source will not interfere with the attainment or maintenance of any NAAQS. The rule also establishes the procedures and requirements for evaluating the emissions impact of hazardous air pollutants. The rule also establishes the procedures for establishing an emission rate based on the good engineering practice stack height as required by 40 CFR 51.118.

R307-410-2. Definitions.

(1) The following additional definitions apply to R307-410.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

(2) Except as provided in (3) below, the definitions of "stack", "stack in existence", "dispersion technique", "good engineering practice (GEP) stack height", "nearby", "excessive concentration", and "intermittent control system (ICS)" in 40 CFR 51.100(ff) through (kk) and (nn) are hereby incorporated by reference.

(3)(a) The terms "reviewing authority" and "authority administering the State implementation plan" shall mean the director.

(b) The reference to "40 CFR parts 51 and 52" in 40 CFR 51.100(ii)(2)(i) shall be changed to "R307-401, R307-403 and R307-405".

(c) The phrase "For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21)" in 40 CFR 51.100(kk)(1) shall be replaced with the phrase "For sources subject to R307-401, R307-403, or R307-405".

R307-410-3. Use of Dispersion Models.

All estimates of ambient concentrations derived in meeting the requirements of R307 shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models), effective July 1, 2005, which is hereby incorporated by reference. Where an air quality model specified in the Guideline on Air Quality Models or other EPA approved guidance documents is inappropriate, the director may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

R307-410-4. Modeling of Criteria Pollutant Impacts in Attainment Areas.

Prior to receiving an approval order under R307-401, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 1, or a modification to an existing source located in an attainment area which increases the total controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 1, shall conduct air

quality modeling, as identified in R307-410-3, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard, as determined by the director.

TABLE 1

POLLUTANT	EMISSIONS
sulfur dioxide	40 tons per year
oxides of nitrogen	40 tons per year
PM10 - fugitive emissions and fugitive dust	5 tons per year
PM10 - non-fugitive emissions or non-fugitive dust	15 tons per year
carbon monoxide	100 tons per year
Lead	0.6 tons per year

R307-410-5. Documentation of Ambient Air Impacts for Hazardous Air Pollutants.

(1) Prior to receiving an approval order under R307-401, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under (c) below for all installations not exempt under (a) below.

(a) Exempted Installations.

(i) The requirements of R307-410-5 do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in (ii) below. This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-401.

(ii) The director may, upon making a written determination that the delay in the implementation of an emission standard under R307-214-2, that incorporates 40 CFR Part 63, might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with (c) below.

(A) The director will notify the source in writing of the preliminary decision to require some or all of the documentation as listed in (c) below.

(B) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the director approves.

(C) In making a final determination, the director will document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

(b) Lead Compounds Exemption. The requirements of R307-410-5 do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-410-4.

(c) Submittal Requirements.

(i) Each applicant's notice of intent shall include:

(A) the estimated maximum pounds per hour emission rate increase from each affected installation,

(B) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e), effective July 1, 2005, which is hereby incorporated by reference for each installation for which the source proposes an emissions increase,

(C) the emission threshold value, calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 2, except in the case of arsenic, benzene, beryllium, and ethylene oxide which shall be calculated using chronic emission

threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 2
EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS			
DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
20 Meters or less	0.038	0.051	0.017
21 - 50 Meters	0.051	0.066	0.022
51 - 100 Meters	0.092	0.123	0.041
Beyond 100 Meters	0.180	0.269	0.090

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS			
DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
50 Meters or less	0.154	0.198	0.066
51 - 100 Meters	0.224	0.244	0.081
Beyond 100 Meters	0.310	0.368	0.123

(ii) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in (d) below.

(iii) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed emissions. The director may require such documentation to include, but not be limited to:

(A) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(B) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(C) a description of the human population or other biological species which could be exposed to the estimated concentration,

(D) an evaluation of land use for the impacted areas,

(E) the environmental fate and persistency.

(d) Toxic Screening Levels and Averaging Periods.

(i) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(A) one hour for emissions releases having a duration period of one hour or greater,

(B) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(C) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(ii) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV- TWA, and the applicable averaging period shall be 24 hours.

(iii) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with (d)(i) above and arsenic, benzene, beryllium, and ethylene oxide which shall be evaluated consistent with (d)(ii) above.

R307-410-6. Stack Heights and Dispersion Techniques.

(1) The degree of emission limitation required of any source for control of any air contaminant to include determinations made under R307-401, R307-403 and R307-405,

must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in (2) below. This does not restrict, in any manner, the actual stack height of any source.

(2) The provisions in R307-410-6 shall not apply to:

(a) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

(b) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

(3) The director may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by R307-410-6. The director shall notify the public of the availability of the demonstration as part of the public notice process required by R307-401-7, Public Notice.

KEY: air pollution, modeling, hazardous air pollutant, stack height

August 7, 2014

19-2-104

Notice of Continuation June 6, 2012

**R315. Environmental Quality, Solid and Hazardous Waste.
R315-1. Utah Hazardous Waste Definitions and References.
R315-1-1. Definitions.**

(a) Terms used in R315-1 through R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) For R315-1 through R315-101, the terms defined in 40 CFR 260.10, 264.18(a)(2), and 279.1, 2010 ed., are adopted and incorporated by reference with the following revisions:

(1) Substitute "Director of the Division of Solid and Hazardous Waste" for "Regional Administrator" or "Administrator," except in the following cases:

(i) In the actual definitions of "Administrator" and "Regional Administrator;" and

(ii) In the definitions of "hazardous waste constituent" and "industrial furnace," "Board" shall be substituted.

(2) Insert in the definition of "existing tank system" or "existing component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(3) Insert in the definition of "new tank system" or "new tank component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265.193(g)(2) and 40 CFR 264.193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(c) The terms defined in 40 CFR 261.1(c), 2010 ed., are adopted and incorporated by reference.

(d) For purposes of R315-3 regarding application and permit procedures for hazardous waste facilities, the terms defined in 40 CFR 270.2, 1999 ed., are adopted and incorporated by reference with the following revisions:

(1) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

(2) "Director" or "State Director" means the Director of the Division of Solid and Hazardous Waste, and

(3) Replace existing definition of "corrective action management unit" with the definition as found in 40 CFR 260.10, 2000 ed.

(e) The definitions of "Polychlorinated biphenyl, PCB," and "Polychlorinated item" as found in 761.3, 40 CFR, 1990 ed., are adopted and incorporated by reference.

(f) In addition, the following terms are defined as follows:

(1) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under 19-6-108 and R315-3, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(2) "Director" means the Director of the Division of Solid and Hazardous Waste.

(3) "Division" means the Division of Solid and Hazardous Waste.

(4) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and
(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in R315-2-9.

(5) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(6) "No free liquids" as used in R315-2-4(a)(23) and R315-2-4(b)(16), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, and that there is no free liquid in the container holding the wipes.

(7) "POHC's" means principle organic hazardous constituents.

(8) "Permittee" means any person who has received an approval of a hazardous waste operation plan under 19-6-108 and R315-3 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(9) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in R315-2-9, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in R315-2-9. If the precipitation run-off has been in contact with a waste listed in R315-2-10 or R315-2-11, then it qualifies as "precipitation run-off" when the water has been excluded under R315-2-16. Water containing any leachate does not qualify as "precipitation run-off".

(10) "Solvent-contaminated wipe" means:

(1) A wipe that, after use or after cleaning up a spill, either:

(i) Contains one or more of the F001 through F005 solvents found in R315-2-10(e), which incorporates by reference 40 CFR 261.31 or the corresponding P- or U- listed solvents found in R315-2-11, which incorporates by reference 40 CFR 261.33;

(ii) Exhibits a hazardous characteristic found in R315-2-9(a) when that characteristic results from a solvent found in R315-2-10, which incorporates by reference 40 CFR part 261; and/or

(iii) Exhibits only the hazardous waste characteristic of ignitability found in R315-2-9(d) due to the presence of one or more solvents that are not listed in R315-2-10 which incorporates by reference 40 CFR part 261.

(2) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at R315-2-4(a)(23) and R315-2-4(b)(16).

(11) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(12) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(13) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(g) Terms used in R315-15 are defined in sections 19-6-703 and 19-6-706(2)(b)(ii).

(h) For purposes of R315-101 regarding cleanup action and risk-based closure standards, the following terms are defined as follows:

(1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, $C = \text{Mean} + t \times \text{Standard Deviation}/n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, $C = \exp(\text{Mean of lognormal-transformed data} + 0.5 \times \text{Variance of lognormal-transformed data} + \text{Standard Deviation of lognormal-transformed data} \times H/(n - 1)^{1/2})$, where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under this rule, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-1-2. References.

(a) For purposes of R315-1 through R315-101, the publication references of 40 CFR 260.11, 2006 ed., are adopted and incorporated by reference.

(b) R315-1 through R315-101 incorporate by reference a

number of provisions from 40 CFR. The incorporated provisions sometimes include cross-references to other sections of 40 CFR. Wherever there are sections in R315-1 through R315-101 that correspond to those cross-references, the cross-references of 40 CFR are not incorporated into R315-1 through R315-101. Instead, the corresponding sections in R315-1 through R315-101 shall apply.

Note: The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

"APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981.

KEY: hazardous waste

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19-6-105

19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.

R315-2-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under R315-3 through R315-9 and R315-13 of these rules and which are subject to the notification requirements of these rules.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Chapter 6, Title 19. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) This rule identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Director has reason to believe that the material may be a solid waste within the meaning of subsection 19-6-102(13) and a hazardous waste within the meaning of subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

R315-2-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by subsection R315-2-4(a) or that is not excluded by variance granted under R315-2-18 and R315-2-19.

(2) A discarded material is any material which is:

(i) Abandoned, as explained in paragraph (b) of this section; or

(ii) Recycled, as explained in paragraph (c) of this section; or

(iii) Considered inherently waste-like, as explained in paragraph (d) of this section.

(b) Materials are solid waste if they are abandoned by being:

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled - or accumulated, stored, or treated before recycling - as specified in paragraphs (c)(1) through (c)(4) of this section. Table 1 of 40 CFR 261.2, 1998 ed., is adopted and incorporated by reference, except that the heading for column 3 shall read "reclamation (Section 261.2(c)(3)) (except as provided in 261.4(a)(17) for mineral processing secondary materials)."

(1) Used in a manner constituting disposal

(i) Materials noted with "*" in column 1 of Table 1 of 40 CFR 261.2, are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land, in which cases the product itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in column 2 of Table 1 of 40 CFR 261.2 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "*" in column 3 of Table 1 of 40 CFR 261.2 are solid wastes when reclaimed, except as provided under R315-2-4(a)(17), which shall be effective on July 1, 1999. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed.

(4) Accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 of 40 CFR 261.2 are solid wastes when accumulated speculatively.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021, unless used as an ingredient to make a product at the site of generation, F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in R315-2-9 through R315-2-10 and R315-2-24, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in 40 CFR 261 Appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Board will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in R315-50-10 and these constituents are not ordinarily found in raw materials or products for which the materials substitute, or are found in raw materials or products in smaller concentrations, and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. After June 30, 1999, in cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at R315-2-4(a)(16) apply rather than this provision.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, described in paragraphs (e)(1)(i)-(iii) of this section:

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) Documentation of claims that materials are not solid

wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing the Utah Solid and Hazardous Waste Act who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

R315-2-3. Definition of Hazardous Waste.

(a) A solid waste as defined in section R315-2-2 is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under subsection R315-2-4(b); and

(2) It meets any of the following criteria:

(i) It is listed in sections R315-2-10 or R315-2-11 and has not been excluded from this section under sections R315-2-16 or R315-2-17.

(ii) It exhibits any of the characteristics of hazardous waste identified in R315-2-9. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under R315-2-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under R315-2-9 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I, 40 CFR 261.24, which R315-2-9(g)(2) incorporates by reference, that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(iii) RESERVED.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in R315-2-10 or R315-2-11 and has not been excluded from paragraph (a)(2) of this section under R315-2-16 and R315-2-17, or paragraph (f) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in R315-2-10 or R315-2-11 are not hazardous wastes, except by application of paragraph (a)(2)(i) or (ii) of this section, if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et seq., including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million; or

(B) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine,

spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(C) One of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050, crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169, clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170, spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded commercial chemical product, or chemical intermediate listed in R315-2-11, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimis" losses include those from normal material handling operations, for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-2-10 or R315-2-11, which incorporates by reference 40 CFR 261 subpart D, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156 - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

(v) Rebuttable presumption for used oil. Used oil

containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10(e) and (f), which incorporates by reference 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in sections R315-2-10 or R315-2-11, when the waste first meets the listing description set forth in sections R315-2-10 or R315-2-11.

(2) In the case of the mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in sections R315-2-10 or R315-2-11 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in section R315-2-9.

(c) Unless and until it meets the criteria of paragraph (d) of this section:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) or (f) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Wastes from burning any of the materials exempted from regulations by 40 CFR 261.6(a)(3)(iii) and (v). R315-2-6 incorporates by reference the requirements of 40 CFR 261.6 concerning recyclable materials.

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (13) of the definition for "Industrial Furnace" which R315-1-1(b) incorporates by reference), that are disposed in solid waste landfills regulated under R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified

below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample -
TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Director for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the solid waste landfill regulated under R315-301 through R315-320 receiving the waste changes. However, the generator or treater need only notify the Director on an annual basis if such changes occur. Such notification and certification should be sent to the Director by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste,

including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste No. K172.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in section R315-2-9. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of R315-13 which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under sections R315-2-10 or R315-2-11, contains a waste listed under sections R315-2-10 or R315-2-11, or is derived from a waste listed in sections R315-2-10 or R315-2-11, it also has been excluded from paragraph (c) of this section under R315-2-16 and R315-2-17.

(e) Notwithstanding R315-2-3(a) through (d) and provided the debris as defined in R315-13, which incorporates by reference 40 CFR 268, does not exhibit a characteristic identified in R315-2-9, the following materials are not subject to regulation under R315-1, R315-2 to R315-8, R315-13, and R315-14:

(1) Hazardous debris as defined in R315-13, which incorporates by reference 40 CFR 268, that has been treated using one of the required extraction or destruction technologies specified in R315-13, which incorporates by reference 40 CFR 268.45 Table 1; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in R315-13, which incorporates by reference 40 CFR 268, that the Director, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(f)(1) A hazardous waste that is listed in R315-2-10 or R315-2-11 solely because it exhibits one or more characteristics of ignitability as defined under R315-2-9(d), corrosivity as defined under R315-2-9(e), or reactivity as defined under R315-2-9(f) is not hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d), (e), (f), or (g).

(2) The exclusion described in paragraph (f)(1) of this section also pertains to

(i) Any mixture of a solid waste and a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(a)(2)(iv); and,

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(c)(2)(i).

(3) Wastes excluded from R315-2-3 are subject to R315-13-1, which incorporates by reference 40 CFR 268, (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under R315-2-4(b)(7) and a hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, solely because it exhibits one or more of the

characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d)-(g) for which the hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, was listed.

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent

wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Director a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, gasification (as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10), or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613,

4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Comparable fuels or comparable syngas fuels that meet the requirements of R315-2-26, which incorporates by reference 40 CFR 261.38.

(17) Spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in R315-2-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Director must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Director must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm

to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Director must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Director, providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(b)(7), mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the conditions specified below are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in R315-1-1(c) which incorporates by reference 40 CFR 261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Director which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and

identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(1) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation;

(2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of R315-2-4(a)(20).

(D) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in R315-2-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in R315-5-1.11, which incorporates by reference 40 CFR 262.11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to

the submission of the one-time notice described in R315-2-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of R315-7 and R315-8.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under R315-2-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc ppm
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of R315-2-4(a)(21)(ii). Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in R315-2-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c)(8), by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes when exported for recycling provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.40.

(iii) Used, broken CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39.

(iv) Glass removed from CRTs is not a solid waste

provided that it meets the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39(c).

(23) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning onsite or at the point of being transported off-site for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in section 260.10 of this chapter.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in R315-1 through R315-101;

(v) Generators must maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in R315-2-4(a)(23)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial of industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.
 (ii) The raising of animals, including animal manures.
 (3) Mining overburden returned to the mine site.
 (4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as

provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;
 (B) Slag from primary lead processing;
 (C) Red and brown muds from bauxite refining;
 (D) Phosphogypsum from phosphoric acid production;
 (E) Slag from elemental phosphorus production;
 (F) Gasifier ash from coal gasification;
 (G) Process wastewater from coal gasification;
 (H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;
 (J) Fluorogypsum from hydrofluoric acid production;
 (K) Process wastewater from hydrofluoric acid production;
 (L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;
 (N) Treated residue from roasting/leaching of chrome ore;
 (O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;
 (Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
 (R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;
 (T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under R315-2-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because

it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K 178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one

exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(16) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in R315-1-1(e)(6).

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in R315-1 through R315-101;

(v) Generators must maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in R315-4-(b)(16)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a municipal solid waste landfill:

(1) regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner;

(B) or to a hazardous waste landfill regulated under R315-1 through R315-101; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under R315-7, R315-8 or R315-14-7, which incorporates by reference 266 subpart H.

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

- (i) The sample is being transported to a laboratory for the purpose of testing;
- (ii) The sample is being transported back to the sample collector after testing;
- (iii) The sample is being stored by the sample collector before transport to a laboratory for testing;
- (iv) The sample is being stored in a laboratory before testing;
- (v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
- (vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

- (1) The sample collector's name, mailing address, and telephone number;
 - (2) The laboratory's name, mailing address, and telephone number;
 - (3) The quantity of the sample;
 - (4) The date of shipment; and
 - (5) A description of the sample.
- (B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, R315-5, and R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-3.34, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

- (i) the sample is being collected and prepared for transportation by the generator or sample collector;
- (ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
- (iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

- (i) The generator or sample collector uses, in "treatability

studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

- (1) the name, mailing address, and telephone number of the originator of the sample;
- (2) the name, address, and telephone number of the facility that will perform the treatability study;
- (3) the quantity of the sample;
- (4) the date of shipment; and
- (5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-4(f) (40 CFR 261.4(f)) or has an appropriate RCRA permit or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

- (A) copies of the shipping documents;
- (B) a copy of the contract with the facility conducting the treatability study;
- (C) documentation showing:
 - (1) the amount of waste shipped under this exemption;
 - (2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;
 - (3) the date the shipment was made; and
 - (4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Director and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Director considers necessary.

(f) SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials,

including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Director by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Director by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) DREDGED MATERIAL THAT IS NOT A HAZARDOUS WASTE.

Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the

Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

- (1) The term dredged material has the same meaning as defined in 40 CFR 232.2;
- (2) The term permit means:
 - (i) A permit issued by the U.S. Army Corps of Engineers (Corps) or the Utah State Division of Water Quality;
 - (ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or
 - (iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs R315-2-4(g)(2)(i) and (ii), as provided for in Corps regulations.

R315-2-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

The requirements of 40 CFR 261.5, 2010 ed., are adopted and incorporated by reference.

R315-2-6. Requirements for Recyclable Materials.

The requirements of 40 CFR 261.6, 2010 ed., are adopted and incorporated by reference within this rule, except for the following changes:

- (a) Paragraph 40 CFR 261.6(a)(5) shall be amended to read as follows:

Hazardous waste as identified in 40 CFR 262.80(a) that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in Section 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

R315-2-7. Residues of Hazardous Waste in Empty Containers.

- (a)(1) Any hazardous waste remaining in either
 - (i) an empty container, or
 - (ii) an empty inner liner removed from a container, as defined in paragraph (b) of this section, is not subject to regulation under R315-2 through R315-13.

- (2) Any hazardous waste in either:
 - (i) a container that is not empty, or
 - (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under R315-2 through R315-13.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as acute hazardous waste listed in sections R315-2-10(e) or R315-2-11(e) is empty if:

- (i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and
- (ii) No more than 2.5 centimeters, one inch, of residue remains on the bottom of the container or inner liner; or
- (iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size, or
- (B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

- (2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container

approaches atmospheric.

- (3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in sections R315-2-10(e) or R315-2-11(e) is empty if:

- (i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;
- (ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or
- (iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

R315-2-8. PCB Wastes Regulated under the Toxic Substance Control Act, 42 U.S.C. et seq.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under part 761 40 CFR and that are hazardous only because they fail the test for the Toxicity Characteristic, hazardous codes D018 through D043 only, are exempt from regulation under R315-2 through R315-50 and the notification requirements of section 3010 of RCRA.

R315-2-9. Characteristics of Hazardous Waste.

- (a) GENERAL.
 - (1) A solid waste, as defined in section R315-2-2, which is not excluded from regulation as a hazardous waste under R315-2-4(b), is a hazardous waste if it exhibits any of the characteristics identified in this section.

- (2) A hazardous waste which is identified by a characteristic in this section, is assigned every EPA Hazardous Waste Number that is applicable as set forth in this section. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under R315-3 through R315-8, and R315-13.

- (3) For purposes of this section, the Director will consider a sample obtained using any of the applicable sampling methods specified in R315-50-6, or an equivalent method, to be a representative sample.

(b) CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE.

- (1) The Board shall identify and define a characteristic of hazardous waste in this section only upon determining that:

- (i) A solid waste that exhibits the characteristic may:
 - (A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
 - (B) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

- (ii) The characteristic can be:
 - (A) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or
 - (B) Reasonably detected by generators of solid waste through their knowledge of their waste.

(c) CRITERIA FOR LISTING HAZARDOUS WASTE.

- (1) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

- (i) It exhibits any of the characteristics of hazardous waste identified in this section.
- (ii) It has been found to be fatal to humans in low doses, or, in the absence of data on human toxicity, it has been shown

in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of less than 50 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness. Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.

(iii) It contains any of the toxic constituents listed in R315-50-10 and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(A) The nature of the toxicity presented by the constituent.

(B) The concentration of the constituent in the waste.

(C) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (c)(1)(iii)(G) of this section.

(D) The persistence of the constituent or any toxic degradation product of the constituent.

(E) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(F) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(G) The plausible types of improper management to which the waste could be subjected.

(H) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(I) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(J) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(K) Other factors as may be appropriate.

Substances will be listed on R315-50-10 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria will be designated Toxic wastes.

(2) The Board may list classes or types of solid waste as hazardous waste if they have reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102 of the Utah Solid and Hazardous Waste Act.

(3) The Board will use the criteria for listing specified in this section to establish the exclusion limits referred to in 40 CFR 261.5(c). R315-2-5 incorporates by reference the requirements of 40 CFR 261.5 concerning conditionally exempt small quantity generators.

(d) CHARACTERISTIC OF IGNITABILITY

(1) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C, 140 degrees F, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, incorporated by reference, see section R315-1-2, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, incorporated by reference, see section R315-1-2, or as determined by an equivalent test method approved under the procedures set forth in section R315-2-15.

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction,

absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(iii) It is an ignitable "compressed gas" as defined in 49 CFR 173.300(a), 1990 ed., which is adopted and incorporated by reference, and as determined by the test methods described in that regulation or equivalent test methods approved under section R315-2-15.

(iv) It is an "oxidizer" as defined in 49 CFR 173.151, 1990 ed., which is adopted and incorporated by reference.

(2) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

(e) CHARACTERISTIC OF CORROSIVITY

(1) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(i) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(ii) It is a liquid and corrodes steel, SAE 1020, at a rate greater than 6.35 mm, 0.250 inch, per year at a test temperature of 55 degrees C, 130 degrees F, as determined by the test method specified in NACE, National Association of Corrosion Engineers Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(2) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

(f) CHARACTERISTIC OF REACTIVITY

(1) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(i) It is normally unstable and readily undergoes violent change without detonating.

(ii) It reacts violently with water.

(iii) It forms potentially explosive mixtures with water.

(iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(viii) It is a "forbidden explosive" as defined in 49 CFR 173.54, or a "Division 1.1, 1.2, or 1.3 explosive" as defined in 49 CFR 173.50 and 173.53, which are incorporated by reference.

(2) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

(g) TOXICITY CHARACTERISTIC

(1) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 CFR 261.24 at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the

methodology outlined in Method 1311, is considered to be the extract for the purposes of this paragraph.

(2) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 of 40 CFR 261.24, which corresponds to the toxic contaminant causing it to be hazardous. Table 1 of 40 CFR 261.24, 1990 ed., is adopted and incorporated by reference.

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

- Ignitable Waste: (I)
- Corrosive Waste: (C)
- Reactive Waste: (R)
- Toxicity Characteristic Waste: (E)
- Acute Hazardous Waste: (H)
- Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with R315-1 through R315-13 where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, 2010 ed., is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 2010 ed., is adopted and incorporated by reference.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as

described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Director considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Director considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e), 1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX,

GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), 2010 ed., is adopted and incorporated by reference.

R315-2-12. Inspections.

Any duly authorized officer, employee or representative of the Department or the Director may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which hazardous wastes are generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to these wastes for the purpose of ascertaining the compliance with R315-1 through R315-101. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

R315-2-13. Variances Authorized.

(a) Variances will be granted by the Board only to the extent allowed under State and Federal law.

(b) The Board may consider a variance request in accordance with the standard established in section 19-6-111.(c) The Board may, at its own instance, review any variance granted during the term for which a variance was granted.

(d) A person applying for a variance shall submit the application, in writing, to the Director. The application shall provide the following:

(1) Citation of the statutory, regulatory, or permit requirement from which the variance is sought;

(2) For variances for which the Board promulgates or has promulgated specific rules, information meeting the requirements of those rules;

(3) Information demonstrating that application of or compliance with the requirement would cause undue or unreasonable hardship on the person applying for the variance;

(4) Proposed alternative requirements, if any;

(5) Information demonstrating that the variance will achieve the purpose and intent of the statutory, regulatory, or permit provision from which the variance is sought;

(6) Information demonstrating that any alternative requirement or requirements will adequately protect human health and the environment; and

(7) If no alternative requirement is proposed, information demonstrating that if the variance is granted, human health and the environment will be adequately protected.

(e) A person applying for a variance shall provide such additional information as the Board or the Director requires.

(f) Nothing in R315-2-13(d) or (e) limits the authority of the Board to grant variances in accordance with the standard established in section 19-6-111. A person applying for a variance under R315-9-2 shall provide such information described under R315-2-13(d) as the Director directs.

R315-2-15. Petitions for Equivalent Testing or Analytical Methods.

(a) Any person seeking to add a testing or analytical method to R315-2, R315-7, R315-8, or R315-50, which incorporates the testing and analytical methods of 40 CFR 261, may petition for a regulatory amendment under this section and R315-2-17. To be successful, the person shall demonstrate to

the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in R315-2, R315-7, R315-8, or R315-50, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) A description of the proposed action, including, where appropriate, suggested regulatory language;

(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information;

(5) A full description of the proposed method, including all procedural steps and equipment used in the method;

(6) A description of the types of wastes or waste matrices for which the proposed method may be used;

(7) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in R315-2, R315-7, R315-8, and R315-50;

(8) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(9) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which it may reasonably require to evaluate the method.

(d) The Board will consider any petitions in accordance with rulemaking procedures outlined in Section 63G-3-601.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the Director and the decision of EPA will be binding upon the Board and the Director.

R315-2-16. Petitions to Amend This Rule to Exclude a Waste Produced at a Particular Facility.

(a) The requirements of 40 CFR 260.22, 1993 ed., as amended by 58 FR 46040, August 31, 1993, regarding petitions to exclude a waste are adopted and incorporated by reference with the following amendments:

(1) Substitute "Board" for "Administrator;"

(2) Include the following paragraphs:

(i) The Board will consider any petitions in accordance with Section 19-1-301.5.

(ii) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.22 to have a particular waste delisted by EPA. In the event delisting is granted, the petitioner shall so notify the Board and the Director and the decision of EPA will be binding upon the Board and the Director unless, within 30 days after such notification, the Board specifically overrules the decision of EPA. In such event, the petitioner may petition the Board directly under this section for the relief sought.

R315-2-17. Petition to Amend Rules.

(a) It is the intent of the Board to insure the compatibility and equivalency of R315-1 through R315-101 with the regulations promulgated by EPA under the Resource Conservation and Recovery Act of 1976.

(b) Any person may petition the Board to modify or revoke any provision in R315-1 through R315-16, R315-50, R315-101, and R315-102. A petition shall be considered under the procedures outlined in 63G-3-601 and R15-2.

R315-2-18. Variances from Classification as a Solid Waste.

The variances from classification as a solid waste of 40

CFR 260.30, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The standards and criteria for variances from classification as a solid waste found in 40 CFR 260.31, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

(1) Substitute "Board" for "Regional Administrator."

R315-2-20. Variance to be Classified as a Boiler.

The provision for a variance to be classified as a boiler as found in 40 CFR 260.32, 1994 ed., as amended by 59 FR 47982, September 19, 1994, is adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.

The procedures for variances from classification as a solid waste or boiler of 40 CFR 260.33, ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis.

The provision regarding the regulation of certain hazardous waste recycling activities of 40 CFR 260.40, 1990 ed., is adopted and incorporated by reference with the following amendment:

Substitute "Director" for "Regional Administrator."

R315-2-23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.

The Director shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in R315-2-6, which incorporates by reference the requirements of 40 CFR 261.6 regarding recyclable materials, under the provisions of 40 CFR 261.6 (b) and (c), rather than under the provisions of 40 CFR 266.70 concerning precious metals recovery.

(a) If a generator is accumulating the waste, the Director will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of R315-5. The notice will become final within 30 days, unless the person served requests a public hearing before the Board to challenge the decision. Upon receiving such a request, the Board will hold a hearing. The Board will provide notice of the hearing to the public and allow public participation at the hearing. The Board will issue a final order after the hearing stating whether or not compliance with R315-5 is required. The order becomes effective 30 days after service of the decision unless the Board specifies a later date.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a hazardous waste permit in accordance with all applicable provisions of R315-3. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Board's decision, he may do so in his hazardous waste permit, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the

reasons for the Board's determination. The question of whether the Board's decision was proper will remain open for consideration during the public comment period discussed under R315-4-1.11 and in any subsequent hearing.

R315-2-24. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservatives.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW-846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the

plant;

- (4) The equipment cleaning or replacement plan;
- (5) The name and address of any persons who conducted the cleaning and replacement;
- (6) The dates on which cleaning and replacement were accomplished;
- (7) The dates of sampling and testing;
- (8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;
- (9) A description of the tests performed, the date the tests were performed, and the results of the tests;
- (10) The name and model numbers of the instrument(s) used in performing the tests;
- (11) QA/QC documentation; and
- (12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

R315-2-25. Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under R315-3 through R315-14 of these rules except as specified in section R315-16 of these rules and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under R315-16:

- (a) Batteries as described in R315-16-1.2;
- (b) Pesticides as described in R315-16-1.3;
- (c) Mercury-containing equipment as described in R315-16-1.4; and
- (d) Mercury lamps as described in R315-16-1.5.

R315-2-26. Exclusion of Comparable Fuel and Syngas Fuel.

The requirements of 40 CFR 261.38, 2010 ed., are adopted and incorporated by reference.

R315-2-27. Exclusions/Exemptions.

The requirements as found in 40 CFR subpart E, sections 261.39 through 261.41, 2007 ed., are adopted and incorporated by reference.

KEY: hazardous waste, administrative procedures

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R317. Environmental Quality, Water Quality.**R317-10. Certification of Wastewater Works Operators.****R317-10-1. Objectives.**

The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel in charge of wastewater works are trained, experienced, reliable and efficient; protect the public health and the environment; provide for the health and safety of wastewater works operators; and establish standards and methods whereby wastewater works operating personnel can demonstrate competency.

R317-10-2. Scope.

A. These certification rules apply to all wastewater treatment works and sewerage systems, with the exception of Onsite Wastewater Systems and Large Underground Wastewater Disposal Systems as defined in Section R317-1-1. This includes both wastewater collection systems and wastewater treatment systems except underground wastewater disposal systems.

B. Wastewater works operated by political subdivisions must employ certified operators as required in this rule.

C. Operators of wastewater systems not requiring certified operators, such as industrial wastewater treatment systems, may be certified according to provisions of these rules for testing and certification.

R317-10-3. Authority.

The certification program for wastewater works operators is authorized by Section 19-5-104.

R317-10-4. Definitions.

"Board" means the Water Quality Board.

"Category" means type of certification, such as collection or wastewater treatment.

"Certificate" means a certificate issued by the director, with recommendation from the council, stating that the recipient has met the minimum requirements for the specified operator category and grade described in this rule.

"Certified Operator" means a person with the appropriate education and experience, as specified in this rule, who has successfully completed the certification exam or otherwise meets the requirements of this rule.

"Chief Operator" means the supervisor in direct responsible charge of all shift operators for a collection or treatment system.

"Collection System" means the system designed to collect and transport sewage from the beginning points that the collection entity regards as their responsibility to maintain and operate, to the points where the treatment facility assumes responsibility for operation and maintenance.

"Council" means the Utah Wastewater Operator Certification Council, as established in Section R317-10-8.

"Continuing Education Unit (CEU)" means ten contact hours of participation in and successful completion of an organized and approved continuing education experience. College credit in approved courses may be substituted for CEUs on an equivalency basis as defined in this rule.

"Direct Responsible Charge (DRC)" means active on-site charge and performance of operation duties. The person in direct responsible charge is generally a supervisor over wastewater treatment or collection who independently makes decisions affecting all treatment or system processes during normal operation which may affect the quality, safety, and adequacy of treatment of wastewater discharged from the plant. In cases where only one operator is employed, this operator shall be considered to be in direct responsible charge.

"Director" means the Director of the Division of Water Quality.

"Grade Level" means any one of the possible steps within a certification category. There are four levels each for collection

and treatment system operators, Grade I being the lowest and Grade IV the highest level. There is one level for lagoon operators.

"Grandfather Certificate" means a certificate issued to an operator, without taking an examination, by virtue of the operator meeting experience and other requirements in Subsection R317-10-11.H of this rule.

"Operating Experience" means experience gained in operating a wastewater treatment plant or collection system which enables the operator to make correct supervisory, operational, safety, and maintenance decisions affecting personnel, water quality, public health, regulatory compliance, and wastewater works operation, efficiency, and longevity.

"Operator" means any person who is directly involved in or may be responsible for operation of any wastewater works or facilities treating wastewater.

"Population Equivalent (P.E.*)" means the population which would contribute an equivalent waste load based on the calculation of total pounds of BOD contributed divided by 0.2. This calculation may be used where a significant amount of industrial waste is discharged to a wastewater system.

"Restricted Certificate" means a certificate issued upon passing the certification examination when other requirements have not been met.

"Small Lagoon System" means a Class I wastewater lagoon treatment system with attached collection system serving fewer than 3,500 population equivalent.

"Wastewater Works" means facilities for collecting, pumping, treating, or disposing of sanitary wastewater.

R317-10-5. Wastewater Works Owner Responsibilities.

A. The chief operator and supervisors who make process decisions for the system and are designated to be in direct responsible charge must be certified at no less than the level of the facility classification.

1. All other operators in direct responsible charge must be certified at no less than one grade lower than the facility classification, or at the lowest required facility classification except as provided in Subsection R317-10-5.

2. All facilities must have an operator certified at the facility level on duty or on call.

3. If a facility or system undergoes a re-rating, all operators considered to be in DRC must be certified at the appropriate level within one year after the date of the notification by the division of the new rating.

B. The facility owner must notify the director within 10 working days after the chief operator considered in DRC has terminated employment, or is otherwise unable to perform those duties. The wastewater works must have an appropriately certified operator, or an operator with a restricted certificate at the appropriate level, designated as DRC within one year from the date the vacancy occurred.

C. For newly constructed wastewater works, an appropriately certified operator, or an operator with a restricted certificate at the appropriate level, must be employed within one year after the system is deemed operable.

D. Those required to be certified may operate a system with a restricted certificate of the required grade for up to one year for a Class I or Class II facility, or up to two years for a Class III or Class IV facility, but may not continue to operate a system if they are unable to obtain an unrestricted certificate at the end of the stipulated period.

E. Contracts

1. General. In lieu of employing a DRC operator as part of its workforce, a facility owner may enter into a contract for DRC services with an operator certified at the appropriate level, or with another public or private entity with operators certified at the appropriate level.

2. Any such contract must be reviewed and approved by

the director.

3. If there is a contract, it must include the names of the certified individuals who will be in direct responsible charge of the operation of the facility. At a minimum the contract must contain the following elements:

- a. a clear description of the overall duties and responsibilities of the facility owner, and the responsibilities of any contracted DRC operator related to the supervision of the facility's operation, including the frequency of visits and the duties to be performed;
- b. identification of the contract period and effective date of the contract;
- c. consideration;
- d. termination clause; and
- e. execution by authorized signatories.

R317-10-6. Facility Classification System.

Treatment plants and collection systems shall be classified in accordance with Table 1.

TABLE 1
FACILITY CLASSIFICATION SYSTEM

FACILITY CATEGORY		CLASS			
		I	II	III	IV
Collection (1)	Pop. Served	3,500 and less	3,501 to 15,000	15,001 to 50,000	50,001 and greater
Treatment Plant (2)	Range of Fac. Points	30 and less	31 to 55	56 to 75	76 and greater
Small Lagoon Systems(3)	Pop. Equiv. Served	3,500 and less			

(1) Simple "in-line" treatment, such as booster pumping, preventive chlorination, or odor control, is considered an integral part of a collection system.

(2) Treatment plants shall be assigned "facility points" in accordance with Table 2 "Wastewater Treatment Plant Classification System".

(3) A combined certificate shall be issued for treatment works and collection system operation.

TABLE 2
WASTEWATER TREATMENT PLANT CLASSIFICATION SYSTEM

Each Unit process should have points assigned only once.

Item	Points
SIZE (2 PT Minimum - 20 PT Maximum)	
Max. Population equivalent (PE) served, peak day(1)	1 - 10
Design flow average day or peak month average, whichever is larger(2)	1 - 10
VARIATION IN RAW WASTE (3)	
Variations do not exceed those normally or typically expected	0
Recurring deviations or excessive variations of 100 - 200% in strength and/or flow	2
Recurring deviations or excessive variations of more than 200% in strength and/or flow	4
Raw wastes subject to toxic waste discharges	6
Acceptance of septage or truck-hauled waste	2
PRELIMINARY TREATMENT	
Plant pumping of main flow	3
Screening, comminution	3
Grit removal	3
Equalization	1
PRIMARY TREATMENT	
Clarifiers	5
Imhoff tanks or similar	5
SECONDARY TREATMENT	
Fixed film reactor	10
Activated sludge	15
Stabilization ponds w/o aeration	5
Stabilization ponds w/aeration	8

TERTIARY TREATMENT	
Polishing ponds for advanced waste treatment	2
Chemical/physical advanced waste treatment w/o secondary	15
Chemical/physical advanced waste treatment following secondary	10
Biological or chemical/biological advanced waste treatment	12
Nitrification by designed extended aeration only	2
Ion exchange for advanced waste treatment	10
Reverse osmosis, electrodialysis and other membrane filtration techniques	15
Advanced waste treatment chemical recovery, carbon regeneration	4
Media Filtration	5

ADDITIONAL TREATMENT PROCESSES	
Chemical additions (2 pts./each for max. of 6 pts.)	2 - 6
Dissolved air flotation (for other than sludge thickening)	8
Intermittent sand filter	2
Recirculating intermittent sand filter	3
Microscreens	5
Generation of oxygen	5

SOLIDS HANDLING	
Solids conditioning	2
Solids thickening (based on technology)	2 - 5
Mechanical dewatering	8
Anaerobic digestion of solids	10
Utilization of digester gas for heating or cogeneration	5
Aerobic digestion of solids	6
Evaporative sludge drying	2
Solids reduction (including incineration, wet oxidation)	12
On-site landfill for solids	2
Solids composting	10
Land application of biosolids by contractor	2
Land application of biosolids under direction of facility operator in DRC	10

DISINFECTION (10 pt. max.)	
Chlorination or ultraviolet irradiation	5
Ozonation	10

EFFLUENT DISCHARGE (10 pt. max.)	
Mechanical Post aeration	2
Direct recycle and reuse	6
Land treatment and disposal (surface or subsurface)	4

INSTRUMENTATION (6 pt. max.)	
Use of SCADA or similar instrumentation systems to provide data with no process operation	0
Use of SCADA or similar instrumentation systems to provide data with limited process operation	2
Use of SCADA or similar instrumentation systems to provide data with moderate process operation	4
Use of SCADA or similar instrumentation systems to provide data with extensive/total process operation	6

LABORATORY CONTROL (15 pt. max)(4)	
Bacteriological/biological (5 pt. max):	
Lab work done outside the plant	0
Membrane filter procedures	3
Use of fermentation tubes or any dilution method (or E. coli determination)	5
Chemical/physical (10 pt. max):	
Lab work done outside the plant	0
Push-button, visual methods for simple tests (i.e. pH, settleable solids)	3
Additional procedures (ie, DO, COD, BOD, gas analysis, titrations, solids volatile content)	5
More advanced determinations (ie, specific constituents; nutrients, total oils, phenols)	7
Highly sophisticated instrumentation (i.e., atomic absorption, gas chromatography)	10

(1) 1 point per 10,000 P.E. or part; maximum of 10 points
 (2) 1 point per MGD or part
 (3) Key concept is frequency and/or intensity of deviation or excessive variation from normal or typical fluctuations; such deviation may be in terms of strength, toxicity, shock loads, inflow and infiltration, with point values ranging from 0 - 6.
 (4) Key concept is to credit laboratory analyses done on-site by plant personnel under the direction of the operator

in direct responsible charge with point values ranging from 0 - 15.

R317-10-7. Qualifications for Operator Grades.

A. General

1. "Qualification Points" means the accumulated points earned through education and experience required to obtain a certification without restriction. Points allocated for relevant education and experience must meet the minimum requirements for each grade. All substitutions are year for year equivalents. A college "year" is considered 45 quarter hours or 30 semester hours of credit.

2. College-level education must be in a job-related field to be credited. However, partial credit may be given for non-job related education at the discretion of the director with the recommendation of the council.

3. Experience may be substituted for a high school education or a graduate equivalence degree in Grades I and II only.

4. Education may be substituted for experience, as specified for each grade.

B. Grade I - minimum 13 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. One year of operating experience (one point per year).

3. Experience may be substituted for all or any part of the education requirements, on a one-to-one basis.

4. Education may not be substituted for experience.

C. Grade II - minimum 14 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Two years of operating experience (one point per year).

3. Up to one year of additional education may be substituted for an equivalent amount of operating experience.

4. Experience may be substituted for all or any part of the education requirement, on a one-to-one basis.

D. Grade III - minimum 16 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Four years of operating experience (one point per year).

3. Up to two years of additional education may be substituted for an equivalent amount of operating experience.

4. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to one year of education.

E. Grade IV - minimum 18 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Six years of operating experience (one point per year).

3. Up to two years of additional education may be substituted for an equivalent amount of operating experience.

4. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to one year of education.

F. An applicant is also required to meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

R317-10-8. Utah Wastewater Operator Certification Council.

A. Membership.

1. Members of the council shall be appointed by the board.

a. Recommendations for appointments may be made by interested individuals or organizations, including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Rural Water Association of Utah, and the Civil and Environmental Engineering Departments of universities in Utah.

b. The council shall serve at the discretion of the board to oversee the certification program in an advisory capacity to the

director as provided in this rule.

2. The council shall consist of seven voting members and should include representation from interest groups as follows:

a. four members who are operators holding valid certificates, with at least two members being wastewater collection system operator and two members being wastewater treatment system operators;

b. one member with at least three years of management experience in either wastewater treatment, collection, or both, who represents municipal wastewater management;

c. one member who is at large and may represent an educational institution in Utah;

d. one member from the private sector who is currently certified as a wastewater operator;

e. one member representing vocational training; and

f. at least two non-voting division staff members should be in attendance at any council meeting.

3. Voting council members shall serve as follows:

a. terms of office shall be for three years with two members retiring each year, except for the third year when three shall retire;

b. any member who does not attend at least 50 percent of the meetings during a year of service may be replaced at the discretion of the board;

c. appointments to succeed a council member who is unable to serve his full term shall be for the remainder of the unexpired term; and

d. council members may be reappointed, but they do not automatically succeed themselves.

4. A majority of voting members shall constitute a quorum for the purpose of transacting council business.

5. Each year the Council shall elect from its membership a Chair and Vice Chair.

B. Duties of the council shall include:

1. evaluating examinations to ensure compatibility with operator responsibilities, accuracy of content, and composition of individual exam databank items;

2. evaluating certification applications, as requested by the director, and making recommendations for approval or disapproval;

3. assisting in administering examinations at various locations;

4. providing a forum for ongoing evaluation of the certification program and recommending changes to the director;

5. providing advice and recommendations for CEU approval; and

6. preparing an annual report of certification program activities for distribution to the board and other interested parties.

R317-10-9. Application for Examination.

A. Prior to taking an examination, an applicant must file an application of intention with the director using an approved form, accompanied by:

1. evidence of qualifications for certification in accordance with the provisions of Section R317-10-11;

2. the appropriate fee; and

3. documentation that requirements for certification of citizenship or alien residency are met.

B. Approved forms are available on the internet at www.waterquality.utah.gov.

R317-10-10. Examination.

A. The time and place of examinations to qualify for a certificate shall be determined by the director upon recommendation of the council.

B. All examinations shall be scored and the applicant notified of the results.

C. Examination fees shall be charged according to the approved division fee schedule to cover the costs of testing.

D. All exams shall be administered in a manner that will ensure the integrity of the certification program.

E. In the event an applicant fails an exam, the applicant may request to review the exam within ten days following receipt of the exam score.

F. The council shall not review examination questions for the purpose of changing individual examination scores.

1. However, recommendations may be made to improve individual questions in the databank for future examinations.

2. If an error is found in the grading of the exam, credit may be given.

R317-10-11. Certificates.

A. Certificates are issued by the director and shall indicate one of the following classifications:

1. Wastewater Treatment Operator - Grades I through IV.
2. Restricted Wastewater Treatment Operator - Grades I through IV.
3. Wastewater Collection Operator - Grades I through IV.
4. Restricted Wastewater Collection Operator - Grades I through IV.
5. Small Lagoon System Operator - Grade I, Wastewater Treatment and Collection System Combined.
6. Restricted Small Lagoon System Operator - Grade I, Wastewater Treatment and Collection System Combined.

B. General.

1. An applicant shall have the opportunity to take any grade of examination.

2. Replacement certificates may be obtained by submitting a written request with payment of a duplicate certificate fee.

c. Restricted and Unrestricted Certificates.

1. A restricted certificate shall be issued if the applicant passes the exam but review of the application form indicates that the applicant lacks the experience or education required for that particular classification.

2. An unrestricted certificate shall be issued if the applicant passes the exam and the experience and education requirements appropriate to the particular grade are met.

3. Restricted certificates shall become unrestricted when an application is submitted to the division showing that the appropriate experience and education requirements are met and a change in status fee is paid.

4. A restricted certificate does not qualify a person as a certified operator for the classification that the restricted certificate is issued, until the limiting conditions are met, except as provided in Section R317-10-5.

5. Upon application, a restricted certificate may be renewed subject to the conditions in Subsection R317-10-11.D.

D. Certificate Expiration and Renewal.

1. Each certificate shall continue in effect for a period of up to three years, unless revoked prior to that time.

2. The certificate must be renewed each three years by payment of a renewal fee and submittal of evidence of required CEUs.

3. The certificate expires on December 31 of the last year of the certificate.

4. Operators considered in DRC must renew by the expiration date in order for the wastewater works to remain in compliance with this rule.

5. Request for renewal shall be made on forms approved by the division.

6. It shall be the responsibility of the operator to make application for certificate renewal.

E. Reinstatement of Expired Certificate.

1. An expired certificate may be reinstated within one year after expiration by payment of a reinstatement fee with the renewal application when other renewal requirements are also

met.

2. After one year, an expired certificate cannot be reinstated, and the operator must retest to become certified.

3. The required CEUs for renewal must be accrued before expiration of the certificate.

4. When unusual circumstances exist, an operator may petition the council to request additional time to meet the requirements.

5. Each petition for exception will be considered on its own merits and recommendation made to the director.

F. CEUs must be earned during the 3 year period prior to the expiration date of the certificate.

G. The director may, after appropriate review by the council, waive examination of applicants holding a valid certificate or license issued in compliance with other certification plans having equivalent standards, and issue a comparable Utah certificate upon payment of a reciprocity fee.

1. If the applicant is working in another state at the time of application, or has relocated to Utah but has not yet obtained employment in the corresponding wastewater field in Utah, a letter of intent to issue a certificate by reciprocity may be provided.

2. When the applicant provides proof of employment in that wastewater field in Utah, and meets all other requirements, a certificate may be issued.

H. In the past, certain individuals received a grandfather certificate.

1. A grandfather certificate was originally issued under authority of Subsection 19-5-104(2)(b)(v). The certificate shall be valid only for the wastewater works at which the operator is employed as that facility existed on March 16, 1991. The certificate may not be transferred to another facility or person. If the facility undergoes an addition of a new process, even if the facility classification does not change, or the collection system has a change in rating, the respective operator must obtain a restricted or unrestricted certificate within one year as specified in this rule.

Grandfather certificates were issued for a period of up to three years and must be renewed prior to the expiration date to remain in effect.

2. Renewal shall include:

- a. the payment of a renewal fee;
- b. submittal of an application form;
- c. evidence of required CEUs; and
- d. the applicant must meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

3. The renewal fee shall be the same as that charged for renewal of other wastewater operator certificates.

4. If the grandfather certificate is not renewed prior to the expiration date, the wastewater works may be considered to be out of compliance with this rule. The operator would then be required to pass the appropriate certification examination to become a certified operator.

R317-10-12. CEUs and Approved Training.

A. CEUs shall be required for renewal of each certificate according to the following schedule:

TABLE 3
REQUIRED CEUs FOR RENEWAL OF EACH CERTIFICATE

OPERATOR GRADE	CEUs REQUIRED IN A 3-YEAR PERIOD
Grade I	2
Grade II	2
Grade III	3
Grade IV	3

B. All CEUs for certificate renewal shall be subject to review for approval to ensure that the training is applicable to

wastewater works operation.

C. The council shall review training documentation and recommend appropriate CEU or credit assignment to the director for approval.

D. If a person holds multiple categories of wastewater operator certificates, such as treatment and collection, CEU credit may be received for each certificate from one training experience if the training is applicable to each category.

R317-10-13. Recommendations of the Council.

A. Initial recommendations.

1. All decisions of the council shall be in the form of recommendations for action by the director.

2. The council shall notify an applicant of any initial recommendation.

3. Any such applicant may, within 30 days of the date the council's notice was mailed, request reconsideration and an informal hearing before the council by writing to: Wastewater Operator Certification Council, Division of Water Quality, P.O. Box 144870, Salt Lake City, Utah 84114-4870.

4. The council shall notify the person of the time and location for the informal hearing.

B. Following the informal hearing, or the expiration of the period for requesting reconsideration, the council shall notify the director of its final recommendation.

C. A challenge to the director's determination regarding wastewater operator certification may be made as provided in Rule R305-7.

R317-10-14. Certificate Suspension and Revocation Procedures.

A. Grounds for suspending or revoking an operator's certificate may be any of the following:

1. demonstrated disregard for the public health and safety;
2. misrepresentation or falsification of figures, reports, or both, submitted to the State;
3. cheating on a certification exam;
4. falsely obtaining or altering a certificate; or
5. significant negligence, incompetence or misconduct in the performance of duties as an operator.

B. Suspension or revocation may result where it may be shown that circumstances and events relative to the operation of the wastewater works were under the operator's jurisdiction and control. Circumstances beyond the control of an operator shall not be grounds for suspension or revocation action.

C. The council may make recommendations to the director regarding the suspension or revocation of a certificate.

1. Prior to making any such recommendation, the council shall inform the individual in writing of the reasons the council is considering such a recommendation.

2. The council shall provide an opportunity for an informal hearing if requested by the certificate holder in writing within 30 days after the date of the notice.

D. Following an informal hearing, or the expiration of the period for requesting a hearing, the director shall make a final determination, after taking into consideration the final recommendation of the council.

E. A challenge to the director's determination may be made as provided in Rule R305-7.

R317-10-15. Noncompliance.

Noncompliance with these certification rules is a violation under Section 19-5-115 and may be subject to enforcement by the director.

KEY: water pollution, operator certification, wastewater treatment, renewals

August 27, 2014

19-5

Notice of Continuation July 11, 2012

R317. Environmental Quality, Water Quality.
R317-12. Certification of Water Pollution Control Facility or Freestanding Pollution Control Property.

R317-12-1. Authority, Purpose and Scope.

1.1 Authorization. These rules are administered by the division authorized by Title 19 Chapter 12.

1.2 Purpose. The purpose of this rule is to protect public health and the environment by encouraging industries to install Pollution Control Facilities and Freestanding Pollution Control Properties through sales and use tax incentives.

1.3 Scope. This rule shall apply to purchases described in Section 19-12-201.

R317-12-2. Definitions.

"Director" means the director as defined in Section R317-1-1.

"Freestanding Pollution Control Property" means freestanding pollution control property as defined in Subsection 19-12-102(6).

"Treatment Works" means treatment works as defined in Section R317-1-1.

"Waste" means waste as defined in Section R317-1-1.

"Water Pollution" means pollution as defined in Section R317-1-1.

R317-12-3. Application for Certification.

3.1 An application for certification shall be made on forms provided by the Director.

3.2 The application shall include all information requested thereon and such additional information as is requested by the Director. At a minimum, the application shall contain:

A. a description of the Pollution Control Facility or Freestanding Property;

B. a description of the property, product or service for a purchase or lease of property, a part, or a service for which a person seeks to claim a sales and use tax exemption under Section 19-12-201;

C. the existing or proposed operational procedure for the Pollution Control Facility or Freestanding Pollution Control Property; and

D. a statement of the purpose served or to be served by the Pollution Control Facility or Freestanding Pollution Control Property.

3.3 The Director may require an application to contain additional information that the Director finds necessary to determine whether to grant certification under Section 19-12-303.

R317-12-4. Issuance of Certification.

4.1 The date the application is filed shall be the date of receipt by the Director of the final item of information requested, and this filing date shall initiate the 120-day review period under Section 19-12-303.

4.2 The Director shall issue a certification of a Pollution Control Facility or a Freestanding Pollution Control Property to the applicant if the Director determines that:

A. the application meets the requirements of the Pollution Control Act in Section 19-12-101;

B. the facility or property that is the subject of the application is a Pollution Control Facility or a Freestanding Pollution Control Property as defined in Section 19-12-102;

C. the person who files the application is a person described in Section 19-12-301; and

D. the purchases or leases for which the person seeks to claim a sales and use tax exemption are exempt under Section 19-12-201.

4.3 If the Director denies certification under this Section to a person who files an application, the Director shall provide a written statement of the reason for the denial to the person no

later than 120 days after the date described in Subsection R317-12-4.1.

4.4 The Director may issue one certification for one or more Pollution Control Facilities or Freestanding Pollution Control Properties that constitute an operational unit.

4.5 If the Director does not issue or deny a certification within 120 days of the date described in Subsection R317-12-4.1, the Director shall issue a certification to the person at the person's request.

R317-12-5. Revocation of Certification and Appeal.

5.1 Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-12-304.

5.2 An appeal of a denial of certification or a revocation of certification by the Director may be contested by filing a Request for Agency Action as provided in Rule R305-7.

KEY: water pollution, tax exemptions, equipment

August 27, 2014 19-12-101

Notice of Continuation January 25, 2012 19-12-102

19-12-201 through 19-12-203

19-12-301 through 19-12-305

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-1. Utah Medicaid Program.****R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

The Department incorporates the July 1, 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 Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual with its attachments;

(9) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual;

(11) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Coverage and Reimbursement Code Look-up Tool for Utah Medicaid Provider Manual at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.p.php>;

(19) CHEC Services Utah Medicaid Provider Manual with its attachments;

(20) Chiropractic Medicine Utah Medicaid Provider Manual;

(21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(22) General Attachments for the Utah Medicaid Provider Manual;

(23) Indian Health Utah Medicaid Provider Manual;

(24) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(25) Medical Transportation Utah Medicaid Provider Manual;

(26) Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments;

(27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(28) Physical Therapy and Occupational Therapy Services

Utah Medicaid Provider Manual;

(29) Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments;

(30) Podiatric Services Utah Medicaid Provider Manual;

(31) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(32) Psychology Services Utah Medicaid Provider Manual;

(33) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(34) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual with its attachments;

(35) School-Based Skills Development Services Utah Medicaid Provider Manual;

(36) Section I: General Information of the Utah Medicaid Provider Manual;

(37) Services for Pregnant Women Utah Medicaid Provider Manual;

(38) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(39) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;

(40) Vision Care Services Utah Medicaid Provider Manual; and

(41) Women's 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).

(e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

KEY: Medicaid
August 19, 2014
Notice of Continuation March 2, 2012

26-1-5
26-18-3
26-34-2

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

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-54. Speech-Language Pathology Services.****R414-54-1. Introduction.**

The Speech-Language Pathology Services program provides a scope of services for Medicaid recipients in accordance with the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid, speech-language pathology services

August 26, 2014

26-1-5

Notice of Continuation January 7, 2014

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-59. Audiology Services.****R414-59-1. Introduction.**

Audiology services provide a scope of services for Medicaid recipients in accordance with the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid, audiology**August 26, 2014****26-1-5****Notice of Continuation October 13, 2010****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-140. Choice of Health Care Delivery Program.****R414-140-1. Introduction and Authority.**

This rule outlines the Choice of Health Care Delivery Program that operates under a freedom-of-choice waiver program authorized under 42 USC 1396n(b). This program provides access to quality and cost-effective health care. This rule is required by Utah Code Subsection 26-18-3(2)(a).

R414-140-2. Definitions.

The definitions in R414-1 apply to this rule. In addition:

(1) The "Choice of Health Care Delivery Program" (CHCDP) is a freedom-of-choice waiver program that allows the Department to require certain groups of Medicaid clients living in Davis, Salt Lake, Utah, and Weber counties to select a health plan that provides services in accordance with the program's waiver. The waiver limits freedom of choice in choosing a health care provider.

(2) An "Enrollee" in the CHCDP is a Medicaid client who lives in an urban county and is enrolled in a health plan.

(3) A "Health Plan" in the CHCDP is a federally defined prepaid inpatient health plan, a federally defined primary care case management system or a federally defined managed care organization under contract with the Utah Department of Health to provide health care services to enrollees.

(4) A "Managed Care Organization" (MCO) is an entity that has a comprehensive risk contract with the Department to make the services it provides to its Medicaid enrollees as accessible (in terms of timeliness, amount, duration, and scope) as those services are to other Medicaid clients within the area served by the entity. The CHCDP requires MCOs to provide or arrange for services described in the CHCDP.

(5) "Prepaid Inpatient Health Plan" (PIHP) is an entity that contracts with the Department under a non-risk arrangement to provide services described in the CHCDP to Medicaid enrollees.

(6) "Primary Care Case Management" (PCCM) is a system under which a physician or other provider contracts with the State to furnish case management services and to provide access to services described in the CHCDP.

(7) "Section 1931" is the section of the Social Security Act that raises the income limits for Medicaid eligibility.

(8) "Urban county" means a county with a population greater than 175,000.

(9) "1115 Demonstration for the Primary Care Network of Utah" is a statewide demonstration waiver that expands Medicaid coverage to adults ages 19 and older who would not otherwise qualify for Medicaid. The two groups of individuals covered under the 1115 Demonstration are Primary Care Network individuals and Non-Traditional Medicaid individuals. Primary Care Network individuals are those who meet certain income requirements who would not otherwise qualify for Medicaid. Non-Traditional Medicaid individuals are those who are ages 19 and older and are not elderly, disabled or pregnant.

R414-140-3. Requirement to Select a Health Plan.

(1) The following Medicaid clients living in urban counties are required to select a health plan:

- (a) Section 1931 children under the age of 19;
- (b) pregnant women;
- (c) blind or disabled children and adults;
- (d) aged populations;
- (e) foster care children; and
- (f) Non-Traditional Medicaid enrollees covered under the 1115 Demonstration for the Primary Care Network of Utah.

R414-140-4. Restrictions on Changes in Enrollment.

(1) The Department must give Medicaid clients a choice of at least two health plans. Each new applicant for Medicaid in

the urban counties is offered an orientation about Medicaid and the Choice of Health Care Delivery Program. A health program representative employed by the Department conducts the orientation and also enrolls Medicaid clients in a health plan. During the orientation the clients are presented with health plan options.

(2) The Department restricts the disenrollment rights of enrollees who are required to enroll with a health plan in accordance with the regulations at 42 CFR 438.56. Disenrollment rights are restricted for a period of up to 12 months with the following exceptions:

(a) during the first three months of the enrollee's initial enrollment with a health plan, the enrollee may select a different health plan without cause;

(i) if the enrollee moves out of the health plan's service area;

(ii) if the enrollee requests to select a different health plan for good cause and the Department approves the request; or

(iii) if the enrollee chooses a different health plan during the Department's annual disenrollment period.

R414-140-5. Service Coverage.

(1) Health plans shall provide all medically necessary services covered under the State Medicaid Plan except:

(a) dental services;

(b) chiropractic services;

(c) long term care services in skilled nursing facilities longer than 30 days with the exception of clients enrolled in the Medicaid Long Term Care Managed Care Program;

(d) psychological services;

(e) services covered under the Prepaid Mental Health Plan;

(f) substance abuse treatment services; and

(g) transportation services;

(2) Medicaid enrollees who are covered under the Non-Traditional Medicaid Plan are limited to the scope of services as defined in the 1115 Demonstration for the Primary Care Network of Utah.

R414-140-6. Qualified Providers.

The Department selects managed care organizations, prepaid inpatient health plans or primary care case management systems through an open cooperative procurement process in which any qualifying MCO, PIHP or PCCM system may request to contract with the Department to provide services covered under the CHCDP.

R414-140-7. Reimbursement Methodology.

The PIHPs are paid under a non-risk arrangement as described in 42 CFR 447.362. The Department's payments to the health plans may not exceed what the Department would have paid on a fee-for-service basis for services furnished to health plan enrollees plus the net savings of administrative costs the Department achieves by contracting with the health plans instead of purchasing the services on a fee-for-service basis. The PCCM providers are paid under a fee-for-service arrangement. In addition, a fee is paid to cover the provision of case management services.

KEY: Medicaid**September 16, 2004****Notice of Continuation August 19, 2014****26-1-5****26-18-3**

R428. Health, Center for Health Data, Health Care Statistics.**R428-1. Health Data Plan and Incorporated Documents.****R428-1-1. Legal Authority.**

This rule is promulgated in accordance with Title 26, Chapter 33a.

R428-1-2. Purpose.

This rule adopts and incorporates documents related to the collection, analysis, and dissemination of data covered in this title.

R428-1-3. Health Data Plan Adoption.

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

R428-1-4. Incorporation by Reference.

The following documents are adopted and incorporated by reference:

(1) Utah Hospital Inpatient Discharge Data Submittal Manual, Data Element Descriptions and Definitions, Version VI, February 2014

(2) Utah Ambulatory Surgical Submittal Manual, Data Element Descriptions and Definitions, Version III, November 2009

(3) HEDIS 2014, Volume 3: Specifications for Survey Measures, published by NCQA

(4) HEDIS 2014, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA

(5) Technical Specifications and Data Submission Procedures for the State of Utah All Payer Database Version 1.3

(6) Utah All-Payer Claims Database Data Submission Guide Version 2.0

**KEY: health, health policy, health planning
August 5, 2014**

26-33a-104

Notice of Continuation November 21, 2011

R428. Health, Center for Health Data, Health Care Statistics.**R428-2. Health Data Authority Standards for Health Data.**
R428-2-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a.

R428-2-2. Purpose.

This rule establishes definitions, requirements, and general guidelines relating to the collection, control, use and release of data pursuant to Title 26, Chapter 33a.

R428-2-3. Definitions.

(1) The terms used in this rule are defined in Section 26-33a-102.

(2) In addition, the following definitions apply to all of Title R428:

(a) "Adjudicated claim" means a claim submitted to a carrier for payment where the carrier has made a determination whether the services provided fall under the carrier's benefit.

(b) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treatment in an outpatient setting into a data record.

(c) "Ambulatory surgical facility" is defined in Section 26-21-2.

(d) "Carrier" means:

(i) an insurer engaged in the business of health care or dental insurance in the state of Utah, as defined in Section 31A-1-301;

(ii) a business under an administrative services organization or administrative services contract arrangement;

(iii) a third party administrator, as defined in Section 31A-1-301, licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in Section 31A-1-301;

(iv) a governmental plan, as defined in Section 414 (d), Internal Revenue Code, that provides health care benefits;

(v) a program funded or administered by Utah for the provision of health care services, including Medicaid, the Utah Children's Health Insurance Program created under Section 26-40-103, and the medical assistance programs described in Title 26, Chapter 18 or any entity under a contract with the Utah Department of Health to serve clients under such a program;

(vi) a non-electing church plan, as described in Section 410 (d), Internal Revenue Code, that provides health care benefits;

(vii) a licensed professional employer organization as defined in Section 31a-40-102 acting as an administrator of a health care insurance plan;

(viii) a health benefit plan funded by a self-insurance arrangement;

(ix) the Public Employees' Benefit and Insurance Program created in Section 49-20-103.

(e) "Claim" means a request or demand on a carrier for payment of a benefit.

(f) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(g) "Data element" means the specific information collected and recorded for the purpose of health care and health service delivery. Data elements include information to identify the individual, health care provider, data supplier, service provided, charge for service, payer source, medical diagnosis, and medical treatment.

(h) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient

hospital stay into a discharge data record.

(i) "Electronic media" means a compact disc, digital video disc, external hard drive, or other media where data is stored in digital form.

(j) "Electronic transaction" means to submit data directly via electronic connection from a hospital or ambulatory surgery facility to the Office according to Electronic Data Interchange standards established by the American National Standards Institute's Accredited Standards Committee, known as the Health Care Transaction Set (837) ASC X 12N.

(k) "Eligible Enrollee" means an enrollee who meets the criteria outlined in the NCQA survey specifications.

(l) "Enrollee" means any individual who has entered into a contract with a carrier for health care or on whose behalf such an arrangement has been made.

(m) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(n) "Health Insurance" has the same meaning as found in Section 31A-1-301.

(o) "HEDIS" means the Healthcare Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(p) "HEDIS data" means the complete set of HEDIS measures calculated by the carriers according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with the carriers.

(q) "Hospital" means a facility that is licensed under Rule R432-100.

(r) "Level 1 data element" means a required reportable data element.

(s) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.

(t) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(u) "Office" means the Office of Health Care Statistics within the Utah Department of Health.

(v) "Order" means an action of the committee that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(w) "Patient Social Security number" is the social security number of a person receiving health care.

(x) "Performance Measure" means the quantitative, numerical measure of an aspect of the carrier, or its membership in part or in its entirety, or qualitative, descriptive information on the carrier in its entirety as described in HEDIS.

(y) "Public Use Data Set" means a data extract or a subset of a database that is deemed by the Office to not include identifiable data or where the probability of identifying individuals is minimal.

(z) "Report" means a disclosure of data or information collected or produced by the committee or Office, including but not limited to a compilation, study, or analysis designed to meet the needs of specific audiences.

(aa) "Research Data Set" means a data extract or subset of a database intended for use by investigators or researchers for bona fide research purposes that may include identifiable information or where there is more than a minimal probability that the data could be used to identify individuals.

(bb) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number.

(cc) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from

the carrier's sampling frame.

(dd) "Sampling Frame" means the carrier enrollment file as described criteria outlined by the NCQA survey specifications.

(ee) "Submission year" means the year immediately following the covered period.

(ff) "Survey agency" means an independent contractor on contract with the Office of Health Care Statistics.

(gg) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(hh) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

(ii) "Submittal Manual for Inpatient Data" means the document referenced in Subsection R428-1-4(1).

(jj) "Submittal Manual for Ambulatory Surgery Data" means the document referenced in Subsection R428-1-4(2).

(kk) "NCQA Survey Specifications" means the document referenced in Subsection R428-1-4(3)

(ll) "NCQA HEDIS Specifications" means the document referenced in Subsection R428-1-4(4)

(mm) "Data Submission Guide for Claims Data" means the document referenced in Subsection R428-1-4(5) for data submissions required prior to May 15, 2014 and the document referenced in Subsection R428-1-4(6) for data submissions beginning May 15, 2014.

R428-2-4. Technical Assistance.

The Office may provide technical assistance or consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit required data according to Title R428.

R428-2-5. Data Classification and Access.

(1) Data collected by the committee are not public, and as such are exempt from the classification and release requirements specified in Title 63g, Chapter 2, Government Records Access and Management Act.

(2) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall not:

(a) take any action that might provide information to any unauthorized individual or agency;

(b) scan, copy, remove, or review any information to which specific authorization has not been granted;

(c) discuss information with unauthorized persons which could lead to identification of individuals;

(d) give access to any information by sharing passwords or file access codes.

(3) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall:

(a) maintain the data in a safe manner which restricts unauthorized access;

(b) limit use of the data to the purposes for which access is authorized;

(c) report immediately any unauthorized access to the Office or its designated security officer.

(4) A failure to report known violations by others is subject to the same punishment as a personal violation.

(5) The Office shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in this section.

R428-2-6. Editing and Validation.

(1) Each data supplier shall review each required record

prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

(2) The Office may subject submitted data to edit checks. The Office may require the data supplier to correct data failing an edit check as follows:

(a) The Office may, by first class U.S. mail or email, inform the submitting data supplier of any data failing an edit check.

(b) The submitting data supplier shall make necessary corrections and resubmit all corrected data to the Office within 10 business days of the date the Office notified the supplier.

R428-2-7. Error Rates.

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

R428-2-8. Data Disclosure.

(1) The committee may disclose data received from data suppliers or data or information derived from this data as specified in Title 26, Chapter 33a.

(2) The Office may prepare reports relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations. The Office may create reports in a variety of formats including print or electronic documents, searchable databases, web-sites, or other user-oriented methods for displaying information.

(3) Unless otherwise specified by the committee, the time period for data suppliers and health care providers to prepare a response as required in Subsections 26-33a-107(1) and 26-33a-107(3) shall be 15 business days. If a data supplier fails to respond in the specified time frame, the committee may conclude that the information is correct and suitable for release.

(4) The committee may note in a report that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

(5) The Office may release to the data supplier or its designee any data elements provided by the supplier without notification when a data supplier requests the data be so supplied.

(6) The committee may disclose data in computer readable formats.

(7) The Director of the Office may approve the disclosure of a public use data set upon receipt of a written request that includes the following:

(a) the name, address, e-mail and telephone number of the requester;

(b) a statement of the purpose for which the data will be used;

(c) agreement to other terms and conditions as deemed necessary by the Office.

(8) The committee may approve the release of a research data set to an institution, association or organization for bona fide research of health care cost, quality, access, health promotion programs, or public health issues. The requester must provide:

(a) the name, address, e-mail and telephone number of the requester and for each person who will have access to the research data set;

(b) a statement of the purpose for which the research data set will be used;

(c) the starting and ending dates for which the research data set is requested;

(d) an explanation of why a public use data set could not be used for to accomplish the stated research purposes, including a separate justification for each element containing identified data requested;

(e) evidence of the integrity and ability to safeguard the data from any breach of confidentiality;

(f) evidence of competency to effectively use the data in the manner proposed;

(g) a satisfactory review from an Office-approved institutional review board;

(h) a guarantee that no further disclosure will occur without prior approval of the Office;

(i) a signed agreement to comply with other terms and conditions as stipulated by the committee.

R428-2-9. Penalties.

(1) The Office, in cooperation with the committee, may apply civil penalties or subject violators to legal prosecution.

(2) Sections 26-23-6 and 26-33a-110 specify civil and criminal penalties for failure to comply with the requirements of Title R428 or Title 26, Chapter 33a.

(3) Notwithstanding Subsection R428-2-9(2), any person that violates any provision of Title R428 may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

(4) Notwithstanding Subsection R428-2-9(2), a carrier that violates any provision of Title R428 may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

- (a) Not to exceed the sum of \$10,000 per violation
- (b) Each day of violation is a separate violation.

R428-2-10. Exemptions and Extensions.

(1) The committee may grant exemptions or extensions from reporting requirements in Title R428 to data suppliers under certain circumstances.

(2) The committee may grant an exemption to a data supplier when the supplier demonstrates that compliance imposes an unreasonable cost.

(a) A data supplier may request an exemption from any particular requirement or set of requirements of Title R428. The data supplier must submit a request for exemption no less than 30 calendar days before the date the supplier would have to comply with the requirement.

(b) The committee may grant an exemption for a maximum of one calendar year. A data supplier wishing an additional exemption must submit an additional, separate request.

(3) The committee may grant an extension to a data supplier when the supplier demonstrates that technical or unforeseen difficulties prevent compliance.

(a) A data supplier may request an extension for any deadline required in Title R428. For each deadline for which the carrier requests an extension, the carrier must submit its request no less than 15 calendar days before the deadline in question.

(b) The committee may grant an extension for a maximum of 30 calendar days. A data supplier wishing an additional extension must submit an additional, separate request.

(4) The supplier requesting an extension or exemption shall include:

- (a) The data supplier's name, mailing address, telephone number, and contact person;
- (b) the dates the exemption or extension is to start and end;
- (c) a description of the relief sought, including reference to specific sections or language of the requirement;
- (d) a statement of facts, reasons, or legal authority in support of the request; and
- (e) a proposed alternative to the requirement or deadline.

(5) A carrier that covers fewer than 2,500 individual Utah residents is exempt from all requirements of this title.

R428-2-11. Contractor Liability.

(1) A data supplier may contract with another entity to submit required data elements on their behalf under Title R428. In such cases, the data supplier must notify the Office of the identity and contact information of the contractor.

(2) Regardless of the existence of a contractor, the responsibility for complying with all requirements of Title R428 remains solely with the data supplier.

KEY: health, health policy, health planning

August 5, 2014

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R428. Health, Center for Health Data, Health Care Statistics.**R428-5. Appeal and Adjudicative Proceedings.****R428-5-1. Legal Authority.**

The Utah Health Data Committee is given rulemaking authority pursuant to Utah Code Annotated Title 26, Chapter 33a.

R428-5-2. Purpose.

The purpose of this rule is to establish procedures used by the Utah Health Data Committee for its adjudicative proceedings.

R428-5-3. Type of Proceeding.

The actions of the committee and requests for committee action are designated as formal adjudicative proceedings. The committee may at any time before a final order is issued in any adjudicative proceeding convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if conversion of the proceeding is in the public interest and conversion of the proceeding does not unfairly prejudice the rights of any party.

R428-5-4. Formal Proceedings.

(1) The committee or its designated representative shall preside over a formal proceeding initiated by a notice of committee action or in response to a request for committee action.

(2) The content of the notice of committee action shall comply with Subsection 63G-4-201(2). Formal hearings shall be held at the next regularly scheduled committee meeting unless prior arrangements are made for an alternate date and proper notice is provided all parties.

(3) Within 30 calendar days of the mailing (electronic or paper) date of a notice of committee action, the respondent or his representative shall file with the Office and with each person known to have a direct interest a written, signed response that includes:

- (a) the agency's file number or other reference number;
- (b) the name of the adjudicative proceeding;
- (c) a statement of the relief or action sought;
- (d) a statement of the facts;
- (e) a statement summarizing the reasons for granting the relief requested.

(4) A conference may be scheduled by the Director of the Office or the presiding officer to encourage settlement before the hearing.

(5) The committee or its designated representative as presiding officer shall have the authority to issue subpoenas at their discretion.

(6) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue an order that includes:

- (a) a statement of the presiding officer's findings of fact;
- (b) a statement of the presiding officer's conclusions of law;
- (c) a statement of the reasons for the presiding officer's decision;
- (d) a statement of any relief ordered by the agency;
- (e) a notice of the right to apply for committee reconsideration;
- (f) a notice of any right to administrative or judicial review available;
- (g) the time limits applicable to any reconsideration or review.

R428-5-5. Default and Reconsideration.

(1) The presiding officer may enter an order of default against a party if:

(a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceedings;

(b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(c) a respondent in a formal adjudicative proceeding fails to file a response within the time frame specified in Subsection R428-5-4(3).

(d) The order of default shall include a statement of the grounds for default and shall be mailed (electronic or paper) to all parties.

(e) A defaulted party may seek to have the committee set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

(f) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

(g) In an adjudicative proceeding that has no parties other than the committee and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

(2) Any party may file a written request for reconsideration with the committee stating the specific grounds upon which relief is requested. The request must be filed within 20 days after:

(a) the date that an Order of Review is issued in an informal adjudicative proceeding; or

(b) the date that a request for review is denied; or

(c) the date that a final order is issued in a formal adjudicative proceeding.

(d) The request for reconsideration shall be filed with the committee and one copy shall be sent by mail (electronic or paper) to each party by the person making the request.

(e) The committee may issue a written order granting or denying the request within 30 working days of filing of the request.

(f) If the committee does not issue an order granting or denying the request within 30 working days after the request is filed, the request for reconsideration shall be considered denied.

R428-5-6. Judicial Review.

An aggrieved party may obtain judicial review of final committee action upon exhaustion of all available administrative remedies. The aggrieved party shall file a petition for judicial review of final agency action within 30 calendar days after the final committee action is issued or is considered to have been issued under Section R428-5-5.

R428-5-7. Declaratory Orders.

(1) Any person or agency may petition for a committee declaratory ruling of rights, status, or other legal relations under a specific statute or rule by submitting a written petition. The petition shall contain the following information:

(a) the specific statute or rule to be reviewed;

(b) the situation or circumstances in which applicability is to be reviewed;

(c) the reason or need for the applicability review;

(d) the name, address, and telephone number where the petitioner can be contacted;

(e) the date of submission and signature of the petitioner.

(2) The committee or its authorized representative shall review and consider the petition and may issue a declaratory ruling setting forth:

- (a) the applicability or non-applicability of the specific statute or rule;
- (b) the reasons for the applicability or non-applicability of the specific statute or rule;
- (c) any requirements imposed on the agency, petitioner, or any other person as a result of the ruling.

(3) The committee may as appropriate:

- (a) interview the petitioner;
- (b) consult with counsel or the Attorney General;
- (c) take any action the committee in its judgment deems

necessary to provide that the petition receives adequate review and due consideration.

(4) If the committee has not issued a declaratory order within 60 days after receipt of the petition, the petition is denied.

(5) The committee will not issue a declaratory order concerning any action which could result in the Department imposing sanctions.

(a) a designation of the statute or rule permitting or requiring review;

- (b) a statement of the issues reviewed;
- (c) findings of fact as to each of the issues reviewed;
- (d) conclusions of law as to each of the issues reviewed;
- (e) the reasons for the disposition;
- (f) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
- (g) a notice of any right of further administrative reconsideration or judicial review available; and
- (h) the time limit applicable to any review.

**KEY: health, health policy, health planning
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R428-5-8. Informal Proceedings.

(1) The committee may convert a formal proceeding to informal as specified under Section R428-5-3. The Chairman of the committee or his designated representative shall act as presiding officer in an informal proceeding. No response or other pleading is required subsequent to the receipt of a notice of agency decision unless specifically requested and a hearing is not required to be held.

(2) The presiding officer may schedule a conference to encourage settlement before issuing a decision.

(3) Before issuing a final order in an informal proceeding, the presiding officer may convert the proceeding to a formal proceeding if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

(4) Unless a time frame is specified elsewhere in this chapter, the presiding officer shall, within a reasonable time of receipt of a request for agency action, issue a signed order in writing stating:

- (a) the decision;
- (b) the reasons for the decision;
- (c) notice of the right to any administrative or judicial review available;
- (d) the time limits for requesting review.

(5) Within 30 calendar days of the issuance of an order by the presiding officer, a party aggrieved by the decision may seek review of that order by filing a written request for review by the full committee. The request shall:

- (a) be signed by the party requesting review;
- (b) state the grounds for review and the relief requested;
- (c) be dated the date of mailing; and
- (d) be sent by mail (electronic or paper) to the presiding officer and to each party of the proceeding.

(6) Within 15 calendar days of the mailing (electronic or paper) of the request for review, any party may file a response with the committee. A copy of the response must also be mailed (electronic or paper) to the presiding officer and each of the parties.

(7) The committee may issue a notice granting or denying the request for review within 30 working days of filing of the request. If the committee does not issue a notice granting or denying the request within the 30 day period the request for review shall be considered denied.

(8) If a review of the order is granted, the notice shall specify the date a hearing shall be conducted before the full committee.

(9) Within a reasonable time from the completion of the hearing, the committee shall issue a written order on review which shall contain:

R428. Health, Center for Health Data, Health Care Statistics.

R428-10. Health Data Authority Hospital Inpatient Reporting Rule.

R428-10-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.

R428-10-2. Purpose.

This rule establishes the reporting standards for inpatient discharge data by licensed hospitals. The data will be used to develop and maintain a statewide hospital discharge data base.

R428-10-3. Source of Inpatient Hospital Discharge Data.

(1) The source for hospital inpatient discharge data shall be Utah licensed hospitals.

(2) Each hospital shall report discharge data records for each inpatient discharged from its facility.

(3) For a patient with multiple discharges, each hospital shall submit a single discharge data record for each discharge. For a patient with multiple billing claims each hospital shall consolidate the multiple billings into a single discharge data record for submission after the patient's discharge.

(4) A hospital may designate an intermediary or may submit discharge data directly to the committee.

(5) Each hospital is responsible for compliance with these rules. Use of a designated intermediary does not relieve the hospital of its reporting responsibility.

(6) Each hospital shall designate a department or other appropriate entity within the hospital and a person responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.

(7) The Department of Health may conduct on-site audits to verify the accuracy of all submittals.

R428-10-4. Data Submittal Schedule.

Each hospital shall submit to the Office discharge data according to the schedule shown in Table 1. The Director of the Office may approve an alternate schedule that meets the needs of the committee.

TABLE

(1) HOSPITAL DISCHARGE DATA SUBMITTAL SCHEDULE

PATIENT'S DATE OF DISCHARGE IS BETWEEN	DISCHARGE DATA RECORD IS DUE BY
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

R428-10-5. Data Element Reporting.

(1) Tables 2 and 3 list the required data elements. Each hospital shall collect and report all data elements shown in Table 2. Each hospital shall report data elements shown in Table 3 whenever the information is a part of the hospital's patient record. Hospitals shall base data submissions on the specifications in the Submittal Manual for Inpatient Data.

(2) Each hospital shall collect patient social security number as a required data element on the hospital discharge record and report the patient social security number with the complete discharge record according to the submittal schedule.

(3) The Office shall adopt an encryption method for the patient social security number by creating a record linkage number as the control number.

(4) Each hospital shall submit the reported data elements on encrypted electronic media acceptable to the Office or send electronically through the Utah Health Information Network or another compatible electronic data interchange network or other secure upload or secure email method.

(5) The Office shall accept data that complies with data

standards established in Rule R590-164, Uniform Health Billing Rule.

TABLE

(2) LEVEL 1 DATA ELEMENTS

CATEGORY	NAME
Provider	
1.	Provider identifier (hospital name)
Patient	
2.	Patient control number
3.	Patient's medical record number
4.	Patient Social Security Number
5.	Patient name
6.	Patient's address, city, state, zip
7.	Patient's date of birth
8.	Patient's gender
Service	
9.	Admission date
10.	Type of admission/visit
11.	Point of origin for admission or visit
12.	Patient's discharge status
13.	Statement covers period
14.	Condition codes (do not resuscitate, homeless, others)
Charge	
15.	Service line
16.	Revenue codes
17.	HCPCS Procedure codes including modifiers
18.	Unit or basis for measurement code
19.	Service units/days
20.	Total charges by revenue code
Payer	
21.	Payer's identification
22.	Patient's relationship to insured
Diagnosis and Treatment	
23.	Diagnosis version qualifier
24.	Principal diagnosis with present on admission
25.	Other diagnosis codes with present on admission
26.	Admitting diagnosis code
27.	Patient's reason for visit codes
28.	External cause of injury codes (E-code) with present on admission
29.	Principal ICD procedure code
30.	Other ICD procedure codes
31.	Date of principal procedure
Physician	
32.	Attending provider primary ID
33.	Operating physician primary ID
34.	Other operating physician primary ID
35.	Rendering physician primary ID
36.	Referring provider primary ID
Other	
37.	Type of bill

TABLE

(3) LEVEL 2 DATA ELEMENTS

CATEGORY	NAME
Patient	
1.	Patient marital status
2.	Patient race and ethnicity
Employer	
3.	Employer name
Charge	
4.	Prior payments
5.	Estimated amount due
Payer	
6.	Insured names
7.	Certificate/Social Security Number/Health Insurance Claim/Identification Number
8.	Insured group names
Physician	
9.	Attending provider secondary ID
10.	Attending provider specialty information
11.	Operating physician secondary ID
12.	Operating physician specialty information
13.	Other operating physician secondary ID
14.	Other operating physic. specialty information
15.	Rendering physician secondary ID
16.	Rendering physician specialty information

- 17. Referring provider secondary ID
- 18. Referring provider specialty information
- 19. Resident ID
- 20. Resident ID Type

KEY: health, hospital policy, health planning

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R428. Health, Center for Health Data, Health Care Statistics.

R428-11. Health Data Authority Ambulatory Surgical Data Reporting Rule.

R428-11-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.

R428-11-2. Purpose.

This rule establishes the reporting standards for ambulatory surgery data by licensed hospitals and ambulatory surgical facilities. The data will be used to develop and maintain a statewide ambulatory surgical data base.

R428-11-3. Source of Ambulatory Surgical Data.

The reporting sources for ambulatory surgery data are Utah licensed general acute care hospitals and ambulatory surgical facilities.

(1) A general acute care hospital shall report discharge data records for each surgical outpatient discharged from its facility.

(2) An ambulatory surgical facility shall report surgical and diagnostic procedure data records for each patient discharged from its facility.

(3) For a patient with multiple discharges, each hospital or ambulatory surgical facility submitting electronic media shall submit a single data record for each discharge. For a patient with multiple billing claims each hospital or ambulatory surgical facility shall consolidate the multiple billings into a single data record for submission after the patient's discharge.

(4) A hospital or ambulatory surgical facility may designate an intermediary or may submit ambulatory surgery data directly to the Office.

(5) Each hospital and ambulatory surgical facility is responsible for compliance with the rule. Use of a designated intermediary does not relieve the hospital or ambulatory surgical facility of its reporting responsibility.

(6) Each hospital and ambulatory surgical facility shall designate a department or other appropriate entity and a person who is responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.

(7) The Department of Health may conduct on-site audits to verify the accuracy of all submittals.

R428-11-4. Data Submittal Schedule.

Each hospital and ambulatory surgical facility shall submit to the Office outpatient surgical data according to the schedule shown in Table 1. The Director of the Office may approve an alternate schedule as long as it meets the needs of the committee.

TABLE

(1) DATA SUBMITTAL SCHEDULE

IF PATIENT'S DATE OF DISCHARGE IS BETWEEN:	DISCHARGE DATA RECORD IS DUE BY:
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

R428-11-5. Data Element Reporting.

(1) Each data supplier shall submit to the Office information relating to any patient surgical or diagnostic procedure falling within the types described in Table 2, as defined by the corresponding CPT codes and ICD-9-CM codes. In case of changes in the CPT and/or ICD-9-CM codes in future versions, the most current list shall override the lists in Table 2.

(2) Table 3 lists the required data elements. Each data

supplier shall collect and submit all data elements shown in Table 3 based on the specifications in the Submittal Manual for Ambulatory Surgery Data.

(3) Each data supplier shall collect patient social security number as a required data element and report the patient social security number with the complete discharge record according to the submittal schedule.

(4) The Office shall adopt an encryption method for the patient social security number by creating a record linkage number as the control number.

(5) Each data supplier shall submit the reported data elements on encrypted electronic media acceptable to the Office or send them electronically through the Utah Health Information Network or another compatible electronic data interchange network or other secure upload or secure email method.

TABLE

(2) SURGICAL SERVICES TO BE SUBMITTED

DESCRIPTION	CPT CODES	ICD-9-CM CODES
Mastectomy	19120-19396	850-8599
Musculoskeletal	20000-29909	760-8499
Respiratory	30000-32999	300-3499
Cardiovascular	33010-37799	350-3999
Lymphatic	38100-38999	400-4199
Diaphragm	39501-39599	
Digestive System	40490-49999	420-5499
Urinary	50010-53899	550-5999
Male Genital	54000-55899	600-6499
Laparoscopy	56300-56399	
Female Genital	56405-58999	650-7199
Endocrine/Nervous	60000-64999	010-0799
Eye	65091-68899	080-1699
Ear	69000-69979	180-2099
Heart Catheterization	93501-93660	3721-3723
Nose, Mouth, Pharynx		210-2999

NOTE (1): IF PERFORMED IN OPERATING OR PROCEDURE ROOM

TABLE

(3) REQUIRED DATA ELEMENTS

CATEGORY:	NAME:
Provider	Medical care provider identifier
1	
Patient	
2	Patient control number
3	Patient's medical chart number
4	Patient's Social Security Number
5	Patient's postal zip code for address
6	Patient's date of birth
7	Patient's gender
Service	
8	Admission date
9	Source of admission
10	Patient's status
11	Discharge date
Diagnosis and Treatment	
12	Diagnosis codes
13	Procedure codes
14	Date of principal procedure
15	Modifiers for procedure codes
16	ICD9 Procedure Codes
17	Related Diagnosis Codes
Charge	
18	Statement covers period
19	Total facility charge
20	Primary, secondary, and third sources of payment
Physician	
21	Performing physician ID
22	Additional physicians' IDs
23	Type of bill (for hospital, if applicable)

KEY: health, hospital policy, health planning

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R428. Health, Center for Health Data, Health Care Statistics.**R428-12. Health Data Authority Survey of Enrollees in Health Plans.****R428-12-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a and in accordance with the Utah Health Plan Performance Measurement Plan.

R428-12-2. Purpose.

This rule establishes the process for the collection of enrollee satisfaction data from Utah carriers that are needed to promote informed consumer choice in plan selection and measure the quality of care provided to enrollees of Utah carriers.

R428-12-3. Creating the Sampling Frame.

(1) The sources for enrollment data are Utah carriers. Each carrier shall include in the sampling frame all eligible enrollees.

(2) Each carrier shall create the sampling frame according to the criteria outlined in the NCQA Survey Specifications.

(3) The sampling frame and procedures used by the reporting carrier are subject to audit by the Office of Health Care Statistics.

R428-12-4. Sampling Frame Submission.

(1) The carrier shall copy the sampling frame using an electronic medium acceptable to the survey agency and then send to the survey agency.

(2) The carrier shall fill out the "Sample Description" sheet to be provided by the survey agency and send it with the electronic sample file. Each carrier shall submit to the survey agency the sampling frame for each of its products no later than four weeks after the receipt of the sampling memo from the survey agency.

R428-12-5. Administration of Survey.

Each year, the Utah Department of Health, in consultation with carriers, will determine the target survey population and the scope of the survey.

KEY: health maintenance organization, performance measurement, health care quality, preferred provider organization

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26-33a-108

R428. Health, Center for Health Data, Health Care Statistics.**R428-13. Health Data Authority. Audit and Reporting of Health Plan Performance Measures.****R428-13-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a, Utah Code, and in accordance with the Utah Health Care Performance Measurement Plan.

R428-13-2. Purpose.

This rule establishes the process for the collection of performance measurement data from Utah carriers that are needed to promote informed consumer choice in plan selection and measure the quality of care provided to enrollees of Utah carriers.

R428-13-3. Submission of Performance Measures.

(1) Each carrier shall compile and submit HEDIS data to the Office according to this rule.

(2) By January 1 of each year, each carrier shall submit to the Office a plan for creating and providing HEDIS data for the preceding calendar year.

(3) By July 1 of each year, each carrier shall submit to the Office HEDIS data for the preceding calendar year.

(4) Each carrier shall contract with an independent audit agency certified by the NCQA to verify the HEDIS data prior to submitting it to the Office.

(5) Each carrier may employ the rotation strategy for HEDIS measures developed and updated by NCQA.

(6) If a carrier presents "Not Reported (NR)" for required measures, it must document why it did not report the required measure.

(7) The auditor shall follow the guidelines and procedures contained in the NCQA HEDIS Specifications.

(8) Each carrier shall cause its contracted audit agency to submit a copy of the audit agency's report by July 1 of the submission year to the Office.

(9) Each carrier shall cause its contracted audit agency to submit a copy of the audit agency's final report by August 15 of the submission year to the Office. The final report shall incorporate the carrier's comments.

R428-13-4. Release of Performance Measures.

(1) The Health Data Committee shall follow the requirements in the NCQA HEDIS Specifications to determine the HEDIS Data Set that the Office may include in reports for public release for public use.

(2) The Office shall give carriers 35 days to review any report using data received under this Section which identifies it by name. The identified carrier may submit comments and alternative interpretations to the Office.

R428-13-5. Exemptions.

(1) Notwithstanding the requirements in Subsection R428-2-11(2), a carrier that cannot comply with the requirements of this rule must request an exemption by January 1 of the relevant submission year.

(2) A carrier may request an exemption from this rule if the carrier did not operate in Utah for the reporting year, if the number of covered lives is too low for HEDIS standards, or for other similarly prohibitive circumstances beyond the carrier's control.

(3) The Office may request additional information from the carrier relevant to the exemption request.

R428. Health, Center for Health Data, Health Care Statistics.**R428-15. Health Data Authority Health Insurance Claims Reporting.****R428-15-1. Legal Authority.**

This rule is promulgated under authority granted in Utah Code Title 26, Chapter 33a and in accordance with the Utah Health Data Plan as adopted in Rule R428-1.

R428-15-2. Purpose.

This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

R428-15-3. Reporting Requirements.

(1) Each carrier shall submit health care claims data described in the Data Submission Guide for Claims Data for each covered person where Utah is the covered person's primary residence, regardless of where the services are provided.

(2) Each carrier shall submit data for all fields contained in the Data Submission Guide for Claims Data if the data are available to the carrier. Each carrier shall notify the Office or its designee of any data elements that are required to be reported under this rule, but that are not available to the carrier.

(3) Each carrier shall submit the health care claims data on a monthly basis.

(4) Each monthly submission is due no later than the last day of the month following the month in which the carrier adjudicated the claim.

R428-15-4. Carrier Registration.

Each carrier required to submit health care claims data shall register by September 1 of each year. Each carrier newly required to submit health care claims data under this rule, either by a change to the rule or because it no longer qualifies for an exemption, shall register with the Office within 30 days of being required to submit.

R428-15-5. Testing of Files.

(1) Prior to February 14, 2014, each carrier required to report under this rule shall meet with the Office or its designee to establish a data submission testing plan and time line. Each carrier shall contact the Office to arrange this meeting by January 15, 2014.

(2) Each carrier shall, according to its data submission testing plan, submit to the Office or its designee a test dataset for determining compliance with the standards for data submission and participate in testing. This test dataset must be in the same format as required by the Data Submission Guide for Claims Data as of May 15, 2014.

(3) Carriers that become subject to this rule after January 15, 2014 shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

R428-15-6. Rejection of Files.

The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. A carrier whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office, or its designee within 10 state business days of notice that the data does not meet the submission requirements.

R428-15-7. Replacement of Data Files.

A carrier may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later submission if the carrier can establish exceptional circumstances for the replacement.

R428-15-8. Limitation of Liability.

As provided in Section 26-25-1, any data supplier that submits data pursuant to this rule cannot be held liable for having provided the required information to the Department.

**KEY: APCD, payers, claims, transparency
August 5, 2014**

**26-33a
26-25**

R430. Health, Family Health and Preparedness, Child Care Licensing.**R430-6. Background Screening.****R430-6-1. Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes requirements for background screenings for child care programs.

R430-6-2. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Applicant" means a person who has applied for a new child care license or residential certificate from the Department, or a currently licensed or certified child care provider who is applying for a renewal of their child care license or certificate.

(2) "Background finding" means a determination by the Department that an individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor.

(3) "Covered individual" means:

(a) owners;

(b) directors;

(c) members of the governing body;

(d) employees;

(e) providers of care, including children residing in a home where child care is provided;

(f) volunteers, excluding parents of children enrolled in the program;

(g) all individuals age 12 and older residing in a residence where child care is provided; and

(h) anyone who has unsupervised contact with a child in care.

(4) "Department" means the Utah Department of Health.

(5) "Involved with child care" means to do any of the following at or for a facility with a child care license or certificate issued by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where care is provided;

(e) function as a member of the governing body of a child care facility; or

(f) be present at a facility while care is being provided, except for parents dropping off or picking up their child, or attending a scheduled event at the child care facility.

(6) "Supported finding" means an individual is listed on the Licensing Information System child abuse and neglect database maintained by the Utah Department of Human Services.

(7) "Unsupervised Contact" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee who has passed a background screening.

(8) "Volunteer" means an individual who receives no form of direct or indirect compensation for providing care.

R430-6-3. Submission of Background Screening Information.

(1) Each applicant requesting a new or renewal child care license or residential certificate must submit to the Department the name and other required identifying information on all covered individuals.

(a) Unless an exception is granted under Subsection (4)

below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(2) The applicant shall state in writing, based upon the applicant's information and belief, whether each covered individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor;

(c) has ever had a supported finding by the Department of Human Services, or a substantiated finding from a juvenile court, of abuse or neglect of a child.

(3) Within ten working days of a new covered individual beginning work at a child care facility or moving into a licensed or certified home, or a child turning 12 who resides in the facility where care is provided, the licensee or certificate holder must submit to the Department the name and other required identifying information for that individual.

(a) Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(4)(a) Fingerprint cards are not required if:

(i) the covered individual has resided in Utah continuously for the past five years, or is less than 23 years of age and has resided in Utah continuously since the individual's 18th birthday; and

(ii) The covered individual will only be involved with child care in a facility that was licensed or certified prior to 1 July 2013,

(b) A covered individual who has previously submitted a fingerprint card under this section for a national criminal history record check and has resided in Utah continuously since that time is not required to submit a fingerprint card.

R430-6-4. Criminal Background Screening.

(1) Regardless of any exception under R430-6-4(4), if an in-state criminal background screening indicates that a covered individual age 18 or older has a background finding, the Department may require that individual to submit a fingerprint card and fee from which the Department may conduct a national criminal background screening on that individual.

(2) Except for the offenses listed under Subsection (3), if a covered individual has a background finding, that individual may not be involved with child care. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate or refuse to issue a new license or certificate.

(3) A background finding for any of the following offenses does not prohibit a covered individual from being involved with child care:

(a) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for an offense under section 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or

unsafe blood alcohol concentration, that is punishable as a Class A misdemeanor under subsection 41-6a-503(1)(b) ;

(c) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for:

(i) 76-4-401, Enticing a Minor;

(g) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6, Offenses Against Property;

(h) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6a, Pyramid Scheme Act;

(i) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 8, Offenses Against the Administration of Government;

(k) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 9, Offenses Against Public Order and Decency, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(4) A covered individual with a Class A misdemeanor background finding may be involved with child care if either of the following conditions is met:

(a) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3), and:

(i) ten or more years have passed since the Class A misdemeanor offense; and

(ii) there is no other background finding for the individual in the past ten years; or

(b) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3) and five or more years have passed, but ten years have not passed since the Class A misdemeanor offense, and there is no other background finding since the Class A misdemeanor offense,

then the individual may be involved with child care as an employee of an existing licensed or certified child care program for up to six months if:

(i) the individual provides documentation for an active petition for expungement of the disqualifying offense within 30 days of the notice of the disqualifying background finding; and

(ii) the licensee or certificate holder ensures that another employee who has passed the background screening is always present in the same room as the individual, and ensures that the individual has no unsupervised contact with any child in care.

(5) If the court denies a petition for expungement from an individual who has petitioned for expungement and continues to be involved with child care as an employee under Subsection (4)(b), that individual may no longer be employed in an existing licensed or certified child care program, even if six months have not passed since the notice of the disqualifying background finding.

(6) The Department may rely on the criminal background screening as conclusive evidence of the arrest warrant, arrest, charge, or conviction, and the Department may revoke or deny a license, certificate, or employment based on that evidence.

(7) If a covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Department of Public Safety, the covered individual may challenge the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(8) If the Department takes an action adverse to any covered individual based upon the criminal background screening, the Department shall send a written decision to the licensee or certificate holder and the covered individual explaining the action and the right of appeal.

(9) All licensees, certificate holders, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

(10) The Executive Director of the Department of Health may consider and exempt individual cases under the following conditions:

(a) the background finding is not for a felony; and

(b) the Executive Director determines that the nature of the background finding, or mitigating circumstances related to the background finding, are such that the individual with the background finding does not pose a risk to children.

R430-6-5. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If a covered individual has an outstanding arrest warrant for, or has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-4(3), the Department may revoke or suspend any license or certificate of a provider, or deny employment, if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes a license or certificate or denies employment based upon the arrest warrant, arrest, or charge, the Department shall send a written decision to the licensee or certificate holder and the covered individual notifying them that a hearing with the Department may be requested.

(3) The Department may hold the license, certificate, or employment denial in abeyance until the arrest warrant, arrest, or felony or misdemeanor charge is resolved.

R430-6-6. Child Abuse and Neglect Background Screening.

(1) If the Department finds that a covered individual has a supported finding on the Department of Human Services

Licensing Information System, that individual may not be involved with child care.

(a) If such a covered individual resides in a home where child care is provided the Department shall revoke the license or certificate for the child care provided in that home.

(b) If such a covered individual resides in a home for which an application for a new license or certificate has been made, the Department shall refuse to issue a new license or certificate.

(2) If the Department denies or revokes a license, certificate, or employment based upon the Licensing Information System maintained by the Utah Department of Human Services, the Department shall send a written decision to the licensee or certificate holder and the covered individual.

(3) If the covered individual disagrees with the supported finding on the Licensing Information System, the individual cannot appeal the supported finding to the Department of Health but must direct the appeal to the Department of Human Services and follow the process established by the Department of Human Services.

(4) All licensees, certificate holders, and covered individuals must report to the Department any supported finding on the Department of Human Services Licensing Information System concerning a covered individual within 48 hours of becoming aware of the supported finding. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

R430-6-7. Emergency Providers.

(1) In an emergency, not anticipated in the licensee or certificate holder's emergency plan, a licensee or certificate holder may assign a person who has not had a criminal background screening to provide emergency care for and have unsupervised contact with children for no more than 24 hours per emergency incident.

(a) Before the licensee or certificate holder may leave the children in the care of the emergency provider, the licensee or certificate holder must first obtain a signed, written declaration from the emergency provider that the emergency provider has not been convicted of, pleaded no contest to, and is not currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, and does not have a supported finding from the Department of Human Services.

(b) During the term of the emergency, the emergency provider may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.

(c) The licensee or certificate holder shall make reasonable efforts to minimize the time that the emergency provider has unsupervised contact with children.

R430-6-8. Restrictions on Volunteers.

A parent volunteer who has not passed a background screening may not have unsupervised contact with any child in care, except the parent's own child.

R430-6-9. Statutory Penalties.

(1) A violation of any rule is punishable by an administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-601.

(2) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license or certificate.

(3) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

**KEY: child care facilities, background screening
August 15, 2014**

Notice of Continuation August 3, 2012

**R432. Health, Family Health and Preparedness, Licensing.
R432-45. Nurse Aide Training and Competency Evaluation
Program.**

R432-45-1. Introduction and Authority.

The Nurse Aide Training and Competency Evaluation Program is authorized by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100 203, 101 Stat. 1330, Sec. 4211.(b)(5)(A)(B)(C)(D)(E)(F)(G), (e)(1)(2), f(2)(A)(B), which the Department adopts and incorporates by reference. The purpose of this program is to allow a certified nurse aide (CNA) to provide quality nursing services to nursing facility residents.

R432-45-2. Definitions.

(1) "Certified nurse aide" means any person who completes a nurse aide training and competency evaluation program (NATCEP) and passes the state certification examination.

(2) "Competency evaluation" means a written or oral examination that addresses each requirement of OBRA for a nurse aide and a demonstration of the tasks the nurse aide is expected to perform as part of the aide's function.

(3) "Nurse aide" means any individual who provides nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed professional or who volunteers to provide these services without monetary consideration.

(4) "Nurse Aide Training and Competency Evaluation Program" (NATCEP) means any program that the Utah Nursing Assistant Registry (UNAR) approves to offer training to an individual who is interested in becoming a certified nurse aide.

(5) "Nursing facility" means any institution that is licensed and Medicare or Medicaid-certified to provide long-term care.

(6) "Resident" means an individual who resides in and receives medical long-term nursing services in a Medicare or Medicaid-certified nursing facility.

(7) "Renewal" means a two-year renewal for a CNA who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

(8) "Retraining" means training for a CNA who has not performed paid services for a total of 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the state-approved nursing assistant training or certification renewal.

(9) "State survey agency" means the Bureau of Health Facility Licensing, Certification and Resident Assessment, within the Department of Health, which is responsible for nursing facility certification and for conducting surveys to determine compliance with Medicare and Medicaid requirements.

(10) "Supervised practical training" means training in a nursing facility in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a licensed nurse, who is a UNAR-approved instructor.

(11) "Train-the-Trainer program" means a UNAR-approved program that consists of formal instructions to potential instructors on how to train a CNA candidate who is at least 16 years old through demonstrations and lectures.

(12) "Waiver of CNA Training Program" means a waiver that allows a qualified nursing professional and qualified in-state expired CNA to challenge the state written and skill examination.

(13) "Utah Nursing Assistant Registry" means the state agency that approves nurse aide training programs, monitors all UNAR test sites, maintains an abuse registry for all substantiated allegations of resident neglect, abuse or misappropriation of resident property by a CNA in a nursing,

Medicare or Medicaid facility, certifies nurse aides who have completed a NATCEP, and renews certifications of qualified CNAs.

R432-45-3. Program Access Requirements.

(1) A nurse aide is required to complete a NATCEP and become certified within 120 days of the first date of employment.

(2) An individual who was certified as a nurse aide on or before July 1, 1989, meets the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

(3) If specific requirements are met in the following cases, the UNAR office may grant a waiver to:

(a) a nursing student who has completed the first semester of nursing school within the past two years and to a current nursing student. An official transcript of a nursing fundamentals class must accompany the Application for Certification Testing. If the candidate does not pass either the skills or written portion of the CNA examination after three attempts, the candidate must complete a NATCEP;

(b) an expired licensed nurse who can show proof of previous licensure in any state and who was in good standing with that state's professional board. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination. If the candidate does not pass either portion, the candidate must complete a NATCEP.

(c) an expired Utah CNA who is in good standing with UNAR. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination within one year of the certification expiration date. If the candidate does not pass either portion, the candidate must retrain;

(d) any out-of-state CNA who is certified and in good standing with another state's survey agency. UNAR grants reciprocity upon the CNA providing proof of certification in that other state.

(4) An out-of-state expired CNA must complete a NATCEP in the state of Utah.

R432-45-4. Competency Evaluation.

(1) An entity that proctors competency evaluations using both written or oral examinations and demonstrations of skills to nurse aides must be UNAR-approved.

(a) An individual shall perform the skills demonstration component in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and a UNAR-approved representative must administer and evaluate the demonstration.

(b) The examiner must be a registered nurse (RN) with a current active license to practice nursing as an RN, who is in good standing with the Division of Occupational and Professional Licensing (DOPL) in the state of Utah, with at least one year of experience in providing care for the elderly or chronically ill of any age;

(c) If the individual fails to satisfactorily complete the skills or written examination after three attempts at either, the candidate must be advised of the areas in which the candidate is inadequate and must retrain at an approved NATCEP;

(d) UNAR shall advise an individual who takes the competency evaluation that a record of the outcome of the evaluation will be included in the nursing assistant registry. Further, UNAR shall require the individual to sign a Release of Information form that indicates the nurse aide's understanding of information that UNAR requires to be entered into the registry;

(e) UNAR shall periodically update and validate the competency evaluations;

(f) UNAR shall establish a written and oral examination that addresses each requirement as prescribed in OBRA. UNAR

must develop this examination from a pool of test questions, only a portion of which to use in any one evaluation, under a system that maintains the integrity of both the pool of questions and individual evaluations;

(g) The competency evaluation must include a demonstration of the tasks the nurse aide is expected to perform as part of the nurse aide's function as a CNA;

(h) For the skills training component of the evaluation, UNAR shall establish a performance record for each NATCEP of major duties and skills that include:

(i) a list of the duties and skills that UNAR expects a CNA to learn in the program in accordance with this section;

(ii) a record that documents when the nurse aide performs this duty or skill;

(iii) documentation of satisfactory or unsatisfactory performance;

(iv) the date of the performance; and

(v) the instructor supervising the performance.

(2) At the completion of the NATCEP, the NATCEP shall give the nurse aide a copy of this record.

(3) The demonstration aspect of the skills training portion of the competency evaluation must have at least five performance tasks, all of which are included in the performance record. UNAR shall select five tasks for each nurse aide from a pool of evaluation items ranked according to degree of difficulty. UNAR shall make a random selection of tasks with at least one task from each degree of difficulty.

R432-45-5. Nurse Aide Training Requirements Under UNAR.

(1) UNAR shall administer a NATCEP through a contract with the Department of Health.

(2) An agency that conducts a NATCEP must be UNAR-approved.

(3) Applicants for approval of a NATCEP and all new instructors must be fingerprinted and have their records checked in state and national bureaus. Before receiving NATCEP approval, a NATCEP must send a background check and fingerprinting to UNAR to be placed in the file of the proposed new training program.

(4) In accordance with this section, UNAR shall review and render a determination of approval or disapproval of any NATCEP when a Medicare or Medicaid participating nursing facility requests the determination. UNAR at its option, may also agree to review and render approval or disapproval of any private NATCEP.

(5) UNAR must, within 90 days of the date of an application, either advise the requestor of UNAR's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

(6) UNAR shall approve a NATCEP that meets the criteria specified in OBRA, the Centers for Medicare and Medicaid Service's guidelines, guidelines designated by the Department of Health, and all UNAR requirements.

(a) UNAR shall admit a student who is at least 16 years old on or before the first day the student begins class; and

(b) shall include an orientation to the training program.

(7) The nurse aide training program must meet certain content requirements to be UNAR-approved.

(a) NATCEP must consist of at least 100 hours of supervised and documented training by a licensed nurse.

(b) The curriculum of the training program must include the following subjects:

(i) communication and interpersonal skills;

(ii) infection control;

(iii) safety and emergency procedures;

(iv) promoting resident independence;

(v) respecting resident rights; and

(vi) basic nursing skills.

(c) The trainee must complete at least 24 hours of supervised practical training in a long-term care facility, and complete all skill curriculum and skill competencies before training in any facility. The skills training must ensure that each nurse aide demonstrates competencies in the following areas:

(i) Basic nursing skills:

(A) taking and recording vital signs;

(B) measuring and recording height;

(C) caring for residents' environment; and

(D) recognizing abnormal signs and symptoms of common diseases and conditions.

(ii) Personal care skills:

(A) bathing that includes mouth care;

(B) grooming;

(C) dressing;

(D) using the toilet;

(E) assisting with eating and hydration;

(F) proper feeding techniques; and

(G) skin care.

(iii) Basic restorative services:

(A) use of assistive devices in ambulation, eating, and dressing;

(B) maintenance of range of motion;

(C) proper turning and positioning in bed and chair;

(D) bowel and bladder training;

(E) care and use of prosthetic and orthotic devices; and

(F) transfer techniques.

(iv) Mental Health and Social Service Skills:

(A) modifying one's behavior in response to the resident's behavior;

(B) identifying developmental tasks associated with the aging process;

(C) training the resident in self-care according to the resident's ability;

(D) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;

(E) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(F) using the resident's family as a source of emotional support.

(v) Resident's rights:

(a) providing privacy and maintaining confidentiality;

(b) promoting the resident's right to make personal choices to accommodate the resident's needs;

(c) giving assistance in solving grievances;

(d) providing needed assistance in getting to and participating in resident and family groups and other activities;

(e) maintaining care and security of resident's personal possessions;

(f) providing care that keeps a resident free from abuse, mistreatment, or neglect, and reporting any instances of poor care to appropriate facility staff; and

(g) maintaining the resident's environment and care through appropriate nurse aide behavior to minimize the need for physical and chemical restraints.

(8) Qualification of Instructors:

(a) a NATCEP must have a program coordinator who is a registered nurse with a current and active Utah license to practice;

(b) who is in good standing with DOPL;

(c) with two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age; and

(d) must have at least three hours of documented consulting time per month with the respective program.

(9) Nursing facility-based programs:

(a) the program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA requirements;

(b) the primary instructor must be a licensed nurse with a current and active Utah license to practice and must be in good standing with DOPL; and

(c) must have two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age.

(10) Before approval of a NATCEP, the program coordinator and primary instructor must successfully complete a UNAR-approved "Train-the-Trainer" program or demonstrate competence to teach a CNA candidate who is at least 16 years old. All high school instructors must be certified to teach in the classroom by completing a "Train the Trainer" program or be certified to teach as defined by the Utah State Office of Education before providing instruction in the classroom.

(11) Students who provide services to residents must be under the direct supervision of a licensed nurse who is a UNAR-approved clinical instructor and whose clinical time is separate from her facility employment.

(12) Qualified personnel from the health professions may supplement the program coordinator and primary instructor. The program coordinator or primary instructor must be present during all provided supplemental training.

(13) Qualified personnel include registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other qualified personnel.

(14) UNAR requires qualified personnel to have at least one year of current experience in the care of the elderly or chronically ill of any age, or to have equivalent experience. Qualified personnel must also meet current licensure requirements, whether they are registered or certified in their field.

(15) A NATCEP must have a student-to-instructor ratio of 12:1 for clinical instruction and shall not exceed a 30:1 ratio for theory instruction. UNAR requires an instructor assistant when the program has more than 20 students.

(16) A NATCEP must provide a classroom with the following:

(a) adequate space and furniture for the number of students;

(b) adequate lighting and ventilation;

(c) comfortable temperature;

(d) appropriate audio-visual equipment;

(e) skills lab equipment to simulate a resident's unit;

(f) clean and safe environment; and

(g) appropriate textbooks and reference materials.

(17) Initial post-approval and ongoing reviews:

(a) After the initial approval of a NATCEP, UNAR grants a one-year probationary period;

(b) During the probationary period, UNAR may withdraw program approval if there is a violation of OBRA, state, federal, or UNAR requirements;

(c) After the probationary period, UNAR shall complete an on-site review and then complete subsequent on-site reviews at least every two years;

(d) The CNA training program shall submit a self-evaluation to UNAR during the interim year that UNAR does not complete an on-site review;

(e) In the event that UNAR does not complete an on-site review within two years, the CNA training program is responsible to send a self-evaluation to UNAR for the applicable two-year period;

(f) If UNAR does not make an on-site visit within two years and the CNA training program sends in a self-evaluation,

UNAR must make an on-site visit within one year of the self-evaluation.

(18) The training and evaluation program review must include:

(a) skills training experience;

(b) maintenance of qualified faculty members for both classroom and skills portions of the nurse aide training program;

(c) maintenance of the security of the competency evaluation examinations;

(d) a record of complaints received about the program;

(e) a record that each nursing facility has provided certified nurse aides with at least 12 hours of staff development training each year with the compensation for the training;

(f) curriculum content that meets state and federal requirements; and

(g) classroom facilities and required equipment that meet state, federal, and UNAR requirements.

(19) In addition to the nurse aide training that UNAR requires, each program shall provide a two-hour orientation of the clinical site for that student before beginning the clinical rotation. The orientation hours are not included in the required 24 hours of clinical training. This orientation phase must include an explanation of:

(a) facility organizational structure;

(b) facility policies and procedures;

(c) facility philosophy of care;

(d) resident population; and

(e) employee rules.

R432-45-6. Certified Nurse Aide Misconduct.

CNA misconduct that adversely affects the health, safety or welfare of the public may result in loss of nurse aide certification.

(1) CNA misconduct related to client safety and integrity includes:

(a) leaving a nursing assistant assignment without properly notifying appropriate supervisory personnel;

(b) failing to report information regarding incompetent, unethical or illegal practice of any health care provider to proper authorities;

(c) failing to respect client rights and dignity regardless of social or economic status, personal attributes, or nature of health problems or disability; or

(d) failing to report actual or suspected incidents of client abuse.

(2) Engaging in sexual misconduct related to the client or to the workplace includes:

(a) engaging in sexual relations if the patient is receiving care from an institution or entity that employs the CNA;

(b) engaging in sexual relations with a client for a period when a generally recognized caregiver and patient relationship exists; or

(c) engaging in sexual relations for an extended period when a patient has reasonable cause to believe a professional relationship exists between the patient or anyone certified under the provisions of this rule (Rule R432-45).

(3) CNA misconduct related to administrative rules and state and federal law includes:

(a) knowingly aiding, abetting or assisting an individual to violate or circumvent any rule or regulation intended to guide the conduct of health care providers;

(b) violating the privacy rights and confidentiality of a client, unless disclosure of client information is required by law;

(c) discriminating against a client on the basis of age, race, religion, sex, sexual preference, national origin, or disability;

(d) abusing a client by intentionally causing physical harm or discomfort, or by striking a client, intimidating a client, threatening a client, or harassing a client;

(e) neglecting a client by allowing a client to be injured or

remain in physical pain and discomfort;

(f) engaging in other unacceptable behavior or verbal abuse towards or in the presence of a client by using derogatory names or gestures or profane language;

(g) using the client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for services;

(h) possessing, obtaining, attempting to obtain, furnishing or administering prescription or controlled drugs to any person, including oneself, except as directed by a health care professional authorized by law to prescribe drugs; or

(i) removing or attempting to remove drugs, supplies, property, or money from the workplace without authorization.

(4) CNA misconduct related to communication includes:

(a) inaccurate recordkeeping in client or agency records;

(b) incomplete recordkeeping regarding client care that includes failure to document care given or other information important to the client's care or documentation which is inconsistent with the care given;

(c) falsifying a client or agency record that includes filling in someone else's omissions, signing someone else's name, recording care not given, or fabricating data and values;

(d) altering a client or agency record that includes changing words, letters and numbers from the original document to mislead the reader of the record, and adding to the record after the original time and date without indicating a late entry;

(e) destroying a client or agency record;

(f) failing to maintain client records in a timely manner which accurately reflect management of client care, including failure to make a late entry within a reasonable time period; or

(g) failing to communicate information regarding the client's status to the supervising nurse or other appropriate person in a timely manner.

(5) CNA misconduct related to the client's family includes:

(a) failing to respect the rights of the client's family regardless of social or economic status, race, religion, or national origin;

(b) using the CNA-client relationship to exploit the family for the CNA's personal gain or for any other reason;

(c) stealing money, property, services, or supplies from the family; or

(d) soliciting or borrowing money, materials or property from the family.

(6) CNA misconduct related to co-workers that includes violent, abusive, threatening, harassing, or intimidating behavior towards a co-worker, which either occurs in the presence of clients or otherwise relates to the delivery of safe care to clients.

(7) CNA misconduct related to achieving and maintaining clinical competency includes:

(a) failing to competently perform the duties of a nursing assistant;

(b) performing acts beyond the authorized duties for which the individual is certified; or

(c) assuming duties and responsibilities of a nursing assistant without nursing assistant training or when competency has not been established or maintained.

(8) CNA misconduct related to impaired function includes:

(a) using drugs, alcohol or mind-altering substances to an extent or in a manner dangerous or injurious to the nursing assistant or others, or to an extent that such use impairs the ability to safely conduct the duties of a nursing assistant; or

(b) having a physical or mental condition that makes the nursing assistant unable to safely perform the duties of a nursing assistant.

(9) CNA misconduct related to certificate violations includes:

(a) providing, selling, applying for, or attempting to procure a certificate by willful fraud or misrepresentation;

(b) functioning as a medication assistant without current

certification as a medication assistant;

(c) altering a certificate of completion of training or nursing assistant certification;

(d) disclosing contents of the competency examination or soliciting, accepting or compiling information regarding the contents of the examination before, during or after its administration;

(e) allowing another person to use one's nursing assistant certificate for any purpose;

(f) using another's nursing assistant certificate for any purpose; or

(g) representing oneself as a CNA without current, valid CNA certification.

R432-45-7. Nurse Aide Registry.

(1) UNAR is the central registry for all certified nurse aides. This registry must identify all individuals who have successfully completed a NATCEP with a passing score of 75.

(2) A NATCEP must report to UNAR, within five days after the program ends, the names of all individuals who satisfactorily completed the program.

(3) UNAR processes all renewals for each nurse aide who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

(4) The state survey agency shall enforce the standards of UNAR described in OBRA, Secs. 4211 and 4212.

(5) The state survey agency shall investigate all complaints of resident neglect, abuse or misappropriation of resident property by a CNA. A CNA is entitled to a hearing through the Division of Medicaid and Health Financing before a substantiated claim can be entered into the registry.

(6) After notification from the health facility licensing, certification and resident assessment agency of a substantiated claim of abuse, neglect or misappropriation of property of a vulnerable adult by a CNA, the name of the CNA and an accurate summary of the findings are placed in the abuse registry in accordance with UNAR protocol.

R432-45-8. Limitations.

(1) UNAR may approve a facility-based NATCEP only if the facility's participation in the Medicare and Medicaid programs has not been terminated within the last two years.

(2) UNAR must review and reapprove a NATCEP at least every two years.

(3) A skilled nursing facility that participates in a Medicare or Medicaid facility may not administer the written and skills components of the competency evaluation.

(4) A nursing facility may employ a nurse aide for more than 120 days only if the aide has completed a NATCEP.

(5) Upon review of program performance standards, UNAR shall terminate a program that does not provide an acceptable plan to correct deficiencies.

KEY: health care facilities

August 25, 2014

26-21-5

26-21-1

R434. Health, Family Health and Preparedness, Primary Care and Rural Health.**R434-30. Primary Care Grant Program.****R434-30-1. Authority and Purpose.**

This rule is required by Section 26-10b-104. It implements the primary care grant program under Title 26, Chapter 10b.

R434-30-2. Definitions.

The definitions as they appear in 26-10b-101 apply. In addition:

(1) "Equipment" under this program is defined as equipment costing \$1,000 or more; has a life span of three years or more; is non-expendable material; is not consumed; and/or a group of items costing less than \$1,000 each, when combined make up one functional unit with a combined cost of \$1,000 or greater is considered one piece of equipment.

(2) "Office" means the Utah Department of Health, Division of Family Health and Preparedness, Bureau of Primary Care, Office of Primary Care and Rural Health.

R434-30-3. Grant Application Process and Content.

(1) The department shall solicit grant applications by issuing a request for grant applications. Applicants responding to the request for grant applications under this program shall submit their grant application as directed in the grant application guidance issued by the Office.

(2) The content of grant applications is defined in Section 26-10b-103.

R434-30-4. Additional Criteria for Awarding Grants.

(1) In addition to the criteria listed in Section 26-10b-104, the Office shall consider the:

(a) reasonableness of the cost of the services to be given;

(b) degree to which primary health care services are provided comprehensively, extent to which supplemental services are provided, and extent to which services are conveniently located;

(c) demonstrated ability and willingness of applicant to systematically review the quality of care;

(d) commitment of applicant to sustain or enhance primary health care capacity for underserved, disadvantaged, and vulnerable populations; and

(e) degree to which the grant application is feasible, clearly described, and ready to be implemented.

R434-30-5. Disbursement and Usage.

(1) Awards to applicants can be made for one year, or up to two consecutive years, however, the total maximum allowable award amount is \$100,000.

(2) In State Fiscal Year 2015, which covers the period July 1, 2014 through June 30, 2015, applicants may request up to \$25,000 of the award amount to be used to purchase equipment and supplies that will enhance their ability to provide expanded primary health care. A single equipment purchase cannot exceed \$5,000.

R434-30-6. Eligibility.

(1) Recognized referral networks that provide primary health care are eligible to apply for grant funding under this Section, as funding permits, for up to a maximum of:

(a) \$50,000 for two years at up to \$25,000 per year; or

(b) \$25,000 for one year.

(2) Grant applications will be open to public entities and community based organizations.

(3) Each applicant is only allowed one grant application.

**KEY: primary health care, medically underserved, grants
August 21, 2014 26-10b-104(4)
Notice of Continuation October 18, 2012**

R527. Human Services, Recovery Services.**R527-10. Disclosure of Information to the Office of Recovery Services.****R527-10-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to meet the rulemaking requirement in Section 62A-11-104.1(2) that the office specify the type of health insurance and financial record information required to be disclosed under that section.

R527-10-2. Disclosure of Health Insurance Information.

Upon written request by the office, the following health insurance information shall be provided:

1. the availability of health and dental insurance to the employee;
2. the health insurance company name, address, and telephone number;
3. the policy number;
4. the names of those covered and their relationship to the employee;
5. the effective dates of coverage;
6. premium and co-payment amounts, deductibles, and exclusions; and
7. claims history for 24 months prior to the date of request by the office.

R527-10-3. Disclosure of Financial Information to the Office of Recovery Services.

Upon written request by the office, the following documents and financial record information regarding the individual named in the request shall be provided:

1. savings account and checking account numbers and balances;
2. type of loan, loan amount and balance owing;
3. current or last known address;
4. social security number;
5. employer and salary, if known;
6. loan application;
7. all names listed on the account and the signature card;
8. terms of accessibility to the account;
9. former names and aliases;
10. all accounts for that person with the bank, including certificates of deposit, money market accounts, treasury bonds, etc., numbers, names, and amounts;
11. security on loans;
12. account statements;
13. transaction slips;
14. checks deposited or cashed;
15. checks written on account;
16. trusts; and
17. applications to open an account.

KEY: child support, financial information, health insurance
July 13, 2009 62A-1-111
Notice of Continuation August 4, 2014 62A-11-104.1(2)
62A-11-107

R527. Human Services, Recovery Services.**R527-450. Federal Tax Refund Intercept.****R527-450-1. Certification Criteria.**

The Office of Recovery Services/Child Support Services (ORS/CSS) will refer qualified support debts to the federal Office of Child Support Enforcement (OCSE) for offset by federal tax refund intercept as authorized in 45 CFR 303.72 (2003) and 42 U.S.C. Section 664.

1. Effective October 1, 2007, all IV-A and Non-IV-A child support debts will be submitted for federal tax refund offset for past-due support owed to any child, whether or not the child is a minor at the time of certification or offset.

2. IV-A and Non-IV-A debts which meet certification criteria may be certified and the federal tax refund may be intercepted, even if the obligor is paying on arrearages.

R527-450-2. Notice of Offset.

ORS/CSS will send an annual notice to all obligors certified for the federal tax refund intercept and to all unobligated spouses of these obligors, notifying the obligor of the amount of the arrearage certified, outlining the unobligated spouse's rights, and directing the obligor to contact ORS/CSS if he has questions. The notice will advise the obligor of his right to contest the amount of past-due support and of his right to an administrative review.

R527-450-3. Earned Income Credit.

ORS/CSS will refund the portion of the obligor's intercepted federal tax refund that resulted from an earned income credit, if the obligor makes a written request and includes a copy of the federal tax return. If the intercept payment has been credited to a Non-IV-A case and has disbursed to the family, the request will be denied.

R527-450-4. Distribution of Collections.

1. Any money collected through the tax refund offset process can be applied only to the arrearage certified.

2. Collections received through federal tax refund intercept will be applied to satisfy certified IV-A and foster care arrearages before Non-IV-A arrearage.

3. On Non-IV-A cases the federal tax intercept payments will be held for at least 30 days but not more than 180 days before being disbursed to the obligee.

4. In the event that the Department of the Treasury, Financial Management Service (FMS) reclaims money which has been refunded to a Non-IV-A obligee, that obligee will be required to repay to the state the amount reclaimed by FMS.

R527-450-5. Deleting or Modifying a Federal Tax Certification.

1. If the total amount certified for IV-A and Non-IV-A is reduced to zero after the certification, ORS/CSS will delete the obligor from the certification list.

2. If the obligor's arrearage increases or decreases, ORS/CSS will modify the certification amount accordingly.

KEY: alimony, child support

October 25, 2007

62A-11-107

Notice of Continuation August 4, 2014

**R539. Human Services, Services for People with Disabilities.
R539-2. Service Coordination.**

R539-2-1. Purpose.

(1) The purpose of this rule is to provide standards for the Division service system, including planning, developing and managing an array of services for Persons with disabilities and their families throughout the state as required by Subsection 62A-5-103(2)(a).

R539-2-2. Authority.

(1) This rule establishes standards as required by Subsection 62A-5-103(2)(b).

R539-2-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Quality Assurance" means the Family, Provider, and Division management's role to assure accountability in areas of fiscal operations, health, safety, and contract compliance.

(b) "Quality Improvement" means the Provider's role to evaluate and improve the internal delivery of services.

(c) "Quality Enhancement" means the Division and the Team members' role in supporting a Person to experience personal life satisfaction in accordance with the Person's preferences.

R539-2-4. Waiting List.

(1) Pursuant to Subsection 62A-5-102(3), the Division shall determine a Person's eligibility for service, followed by a determination of that Person's priority relative to others who are also eligible. The Division shall use a standardized Needs Assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The Support Coordinator shall assess with the Person the array of services that may be needed. If funding is not immediately available, the Person shall be placed on a waiting list for support. Persons who have been determined eligible for the Division's Medicaid Waivers can choose to wait for Division Support services or seek services available through Medicaid in an approved facility.

(2) If the Person requires, and could use, support services on the day of intake, the Person has an immediate need; otherwise, the Person has a future need.

(3) A Needs Assessment Form shall be completed for all Persons with an immediate need for support services. The Needs Assessment calculates the score of each Person by using the following criteria:

- (a) severity of the disabling condition;
- (b) needs of the Person and/or family;
- (c) urgency of need
- (d) appropriate alternatives available; and
- (e) other factors determined by the Division to reflect accurately on the Person's need:
 - (i) household composition and size;
 - (ii) parental/caregiver ability;
 - (iii) finances and insurances;
 - (iv) unmet medical needs;
 - (v) problem behaviors;
 - (vi) protective service issues;
 - (vii) resources/supports needed;
 - (viii) time on immediate or future need waiting list.

(4) The Division determines the Person's score, rank orders the scores, and enters the Person's name and score on the statewide waiting list.

(5) A Person's ranking may change if the Person's needs change or as Needs Assessments are completed for new Applicants.

(6) No age limitations apply to a Person placed on the

waiting list for community living support or family support.

(7) To preserve the Medicaid Waiver and state-wide service infrastructure, exceptions may be made to the person's ranking on the waiting list when authorized by the Division Director and the Department of Health.

R539-2-5. Person-Centered Process.

(1) The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process shall have an individualized focus and incorporate the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and the Person's Team should guide and direct this process.

(a) The Person's Team shall work with the Person to identify goals.

(i) The Person receiving supports determines the membership of the Team, which shall include the Support Coordinator.

(ii) The Team meets at least annually within the month in which the previous meeting occurred, or more often as the Person or other members of the Team determine necessary.

(b) The Person, Provider, and Family shall assess, plan, implement, and evaluate goals and supports for which they are responsible, as agreed upon and listed on Division Form 1-16 in the planning meeting.

(c) The Team shall decide the level of detail required to describe the actions involved in the assessing, planning, implementing, and evaluating needs for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach shall be demonstrated and documented in the Person's file.

(d) Any interested party who believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person, should contact the Support Coordinator immediately to resolve the issue informally, and, if necessary, through the administrative hearing process outlined in R539-3-8 Notice of Agency Action and Administrative Hearings.

R539-2-6. Entry Into and Movement Within Service System.

(1) The Division shall assure that an appropriate choice of supports and Providers exist for Persons entering or moving within the support system in accordance with Subsections 62A-5-103(1) and 62A-5-103(2). The Division shall coordinate, approve, and oversee all out-of-home placements.

(2) Entry into Division-funded supports:

(a) Once a Person's application for waiver services is processed by the Division, the Person is referred to the local financial eligibility office.

(b) Prior to the provision of community living supports, a Person may be required to complete a medical examination and, if under the age of 18, provide a current immunization record.

(c) Admission to Division programs from a nursing facility will be coordinated by the Division with the Person, the nursing facility social worker, the Support Coordinator, and the prospective Provider.

(d) The Division shall provide Persons with a choice of Providers by:

(i) sending Providers notice and invitation to submit offers to provide services via use of Division Form 1-6; and

(ii) assisting the Person to make an informed choice of Provider.

(e) Interested Providers may schedule and coordinate a service entry meeting that involves the Person, the Representative, Support Coordinator, and invited guests, (e.g., Developmental Center staff, school representative, and Division staff). The meeting should be held at the prospective site of

placement whenever possible.

(f) The Provider shall submit an acceptance or denial letter within ten business days of the service entry meeting to the Support Coordinator and the Person. An acceptance letter shall include a written description of the following:

- (i) services to be provided;
- (ii) location of the service;
- (iii) name and address of the primary care physician, or other medical specialists, including, for example, neurologist or dentist, if applicable;
- (iv) a training and in-service schedule for the staff to meet with the Person;
- (v) proposed date services will begin; and
- (vi) agreed upon rate and level of support.

(g) The physical move of the Person shall be the responsibility of the Provider who is accepting the Person.

(h) The Division shall send the Person's information to the Provider five business days prior to the move.

(3) Any Team Member may initiate a request to change Provider or Developmental Center residence by asking the Support Coordinator to arrange a meeting.

(4) If a Person requests a change of Provider, the Support Coordinator shall arrange a discharge meeting that provides a ten-business-day written notice to the Person, present Provider, and Support Coordinator.

(a) The present Provider may request the opportunity to make changes in the existing relationship to address the concerns that initiated the discharge meeting.

(b) The Director shall make the final decision concerning the discharge if the parties cannot come to agreement.

(5) A Provider initiated request for discharge of a Person shall require 90 calendar days prior notification to the Person and the Division.

(6) Emergency Services Management Committee (ESMC):

(a) An Emergency Services Management Committee chairperson shall be appointed by the Division Director. Membership shall include:

- (i) Division Specialists;
- (ii) a representative from the Division who is skilled in crisis intervention and knowledgeable of local resources;
- (iii) a representative from the Developmental Center; and
- (iv) others as appointed by the Division Director.

(b) The Emergency Services Management Committee shall ensure that Persons are placed in the least restrictive most appropriate living situation as per Sections 62A-5-302 through 62A-5-312 and Subsection 62A-5-402(2)(a). Exceptions to the statute requiring children under age 11 to live only in family-like environments, as per Section 62A-5-403, require Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

R539-2-7. Quality Management Procedures.

(1) The Division will oversee the three distinct functional roles of quality management, which are Quality Assurance, Quality Improvement, and Quality Enhancement.

(a) Necessary quality assurances are specified by contract with the Division. The Division may work with other offices and bureaus of the Department of Human Services and the Department of Health to assure quality.

(b) Providers are responsible to develop and implement an internal quality management system, which shall:

- (i) Evaluate the Provider's programs; and
- (ii) Establish a system of self-correcting feedback.

(c) The implementation of the Person's Action Plan shall be designed to enhance the Person's life. The Person and Person's Team shall:

- (i) Identify and document the Person's preferences;
- (ii) Plan how to support the Person's life satisfaction; and

(iii) Implement the plan with supports from the Division, such as;

(A) Technical Assistance, which involves training, mentoring, consultation, and referral through Division staff.

(B) Quality Enhancement Resource Brokerage, which involves identification and compilation of community resources, including other consumers and families, and referral to and prior approval of payment for these supports.

(C) Consumer empowerment, which involves rights education, leadership training.

(D) Team and System Process Enhancement, which involves facilitation and negotiation training, community education, and consumer satisfaction surveys.

(2) The Division shall evaluate the Person's satisfaction and statistical statewide system indicators of life enhancement.

(3) Division staff shall promote enhancement of the Person's life; support improvement efforts undertaken by Providers, Persons, and families; and assure accountability.

R539-2-8. Request for New Support Coordinator.

(1) A Person may request a new Support Coordinator by submitting a written request to the Region Office Supervisor.

KEY: services, people with disabilities

February 13, 2013

Notice of Continuation August 7, 2014

62A-5-102

62A-5-103

R539. Human Services, Services for People with Disabilities.**R539-3. Rights and Protections.****R539-3-1. Purpose.**

(1) The purpose of this rule is to support Persons in exercising their rights as Persons receiving funding from the Division. The procedures of this rule constitute the minimum rights for Persons receiving Division funded services and supports.

R539-3-2. Authority.

(1) This rule establishes procedures and standards for the protection of Persons' constitutional liberty interests as required by Subsection 62A-5-103(2)(b).

R539-3-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

R539-3-4. Human Rights Committee.

(1) This rule applies to the Division, Persons funded by the Division, Providers, Providers' Human Rights Committees, and the Division Human Rights Council.

(2) All Persons shall have access to a Provider Human Rights Committee with the exception of the following:

- (a) Persons receiving physical disabilities services.
- (b) Families using the Self-Administered Model.
- (c) Persons receiving only family supports or respite.

(3) The Provider Human Rights Committee approves the services agencies provide relating to rights issues, such as rights restrictions and the use of intrusive behavior supports. In addition, the Committee provides recommendations relating to abuse and neglect prevention, rights training, and supporting people in exercising their rights.

(4) Any interested party may request that the rights of a Person be reviewed by a Provider Human Rights Committee by contacting the Person's Provider agency verbally or in writing.

(5) Any interested party may request an appeal of the Provider Human Rights Committee decision by sending a request to the Division, 195 North 1950 West, Salt Lake City, UT 84116. The Division shall make a decision whether there will be a review and shall notify the Person, Provider, and Support Coordinator concerning the decision within eight business days. The notification shall contain a statement of the issue to be reviewed and the process and timeline for completing the review.

R539-3-5. Representative Payee Services.

(1) Unless a Person voluntarily signs the Division Voluntary Financial Support Agreement Form 1-3 or a Provider Human Rights Committee has approved restriction on the use and access to personal funds, the Person shall have access to and control over such funds.

(2) The Representative Payee shall follow all Social Security Administration requirements outlined in 20CFR416.601-665.

(3) The Division shall review Provider records for a sample of Representative Payee files on an annual basis.

(4) If the Department does not have guardianship or conservatorship and the Division has not been named as Representative Payee by the Social Security Administration, the Person may sign a Voluntary Financial Support Agreement, Division Form 1-3, allowing the Department to act as Representative Payee.

(5) If the Division is acting as the Representative Payee for a Person, the Division may initiate termination of a Representative Payee relationship through written notification to the Person and the funding agency.

(a) The Division shall initiate termination of a Representative Payee arrangement when:

(i) a Person with a voluntary arrangement requests termination of Representative Payee status;

(ii) a funding agency requests termination of Representative Payee status;

(iii) Person with a Representative Payee becomes ineligible for funding; or

(iv) a Person moves out of the service area.

R539-3-6. Personal Property.

(1) Restrictions to property that are implemented by the Division or Provider shall be part of a written plan or as an Emergency Behavior Intervention in accordance with Division Administrative Rule. Restrictions shall be approved by the Team and Provider Human Rights Committee.

R539-3-7. Privacy.

(1) Persons shall have privacy, including private communications (i.e. mail, telephone calls and private conversations), personal space, personal information, and self-care practices (i.e. dressing, bathing, and toileting).

(2) Restrictions to privacy that are implemented by the Division or Provider shall be part of a written plan and approved by the Team and Provider Human Rights Committee. Circumstances that require assistance in self-care due to functional limitations do not require a written plan.

(3) No Person shall be subject to electronic surveillance of any kind without:

(a) express written consent from the Person to be under surveillance or the Person's guardian;

(b) approval of both the Person's Team and the Provider Human Rights Committee;

(c) certification by the Provider Human Rights Committee that the electronic surveillance meets a necessary health or safety concern and is done in the least intrusive manner possible; and

(d) submission of Electronic Surveillance Certification to the Division Quality Manager.

(4) Electronic surveillance shall not be placed in common areas without:

(a) express written consent from all Persons who live at the site, or the guardians of those Persons;

(b) approval of the Provider Human Rights Committee;

(c) certification by the Provider Human Rights Committee that the electronic surveillance meets a necessary health or safety concern and is done in the least intrusive manner possible; and

(d) submission of Electronic Surveillance Certification to the Division Quality Manager.

(5) Under no circumstances shall electronic surveillance be used by administrative or supervisory staff as a substitute for supervision of employees providing direct care to Persons.

(6) Visitors shall be provided with notice of electronic surveillance upon entering the premises.

(a) Notice shall be provided by placing a sign of substantial size, in a conspicuous location, so as to attract the attention of visitors as they enter.

(7) The Person's Team and the Provider Human Rights Committee shall conduct reviews of electronic surveillance:

(a) at least annually; and

(b) in response to specific requests for review from the Person under surveillance or that Person's guardian.

(8) Electronic surveillance at the Utah State Developmental Center shall comply with federal regulations outlined in 42 C.F.R. 483.420(a)(7) (2011), 42 C.F.R. 483.440(f)(3)(i)-(iii) (2011) and 42 C.F.R. 483.470(d)(2) (2011).

R539-3-8. Notice of Agency Action and Administrative Hearings.

(1) Persons have the right to receive adequate written

Notice of Agency Action and to present grievances about agency action by requesting a formal or informal administrative hearing in accordance with R497-100 for Persons receiving non-Waiver services, and R410-14 for Persons receiving Waiver services.

(2) Pursuant to Utah Code Annotated, Title 63G, Chapter 4, the Division shall notify a Person in writing before taking any agency action, such as changes in funding, eligibility, or services.

(3) At least 30 calendar days before the Division terminates or reduces a Person's services or benefits, the Division shall send the Person a written Notice of Agency Action.

(4) The Notice of Agency Action shall comply with Subsection 63G-4-201 and R497-100-4(2)(a).

(5) To assist a Person in requesting an administrative hearing, the Division shall send the Person a Hearing Request Form 490S when the Division sends the Notice of Agency Action Form 522.

(6) To request an informal hearing with the Department of Human Services for non-waiver services, the Person must file a Hearing Request Form 490S with the Division within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(7) To request a formal hearing with the Department of Health for Waiver services, the Person must file the Medicaid Standard Hearing Request Form with the Division and Department of Health, Division of Health Care Finance within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(8) This 30-day deadline for formal and informal hearings applies regardless of whether the Person also wishes to participate in the Division's conflict resolution process.

(a) If the Person files the Hearing Request within ten calendar days of the mailing date of the Notice of Agency Action, the Person's services shall continue unchanged during the formal or informal hearing process.

(b) If the Person files the Hearing Request Form between 11 and 30 calendar days after the mailing date of the Notice of Agency Action, the Person is entitled to an administrative hearing, but the Person's services and benefits shall be discontinued or reduced according to the Notice of Agency Action during the formal or informal hearing process.

(9) A Person may file a Request for Hearing Form for a formal or informal hearing and choose to still participate in the Division's conflict resolution process prior to the formal or informal hearing.

(10) If the Person requests an informal hearing and also chooses the conflict resolution process, the conflict resolution process must be completed before the informal hearing can begin, unless the Person submits a written request to the Division to end the conflict resolution process prematurely.

R539-3-9. Participation in Hospice Services.

(1) Persons expected by their physicians to live fewer than six months have the right to pursue hospice services as their choice of end-of-life care. A Person who is expected by two physicians to live fewer than six months and who receives Division funding for services and supports may request to continue to receive their Division-funded services and supports while participating in hospice services.

(2) If a Person has not executed a Durable Power of Attorney for Health Care and is incapable of making an informed decision about hospice services or signing a Hospice Agreement, choices related to end-of-life care shall be made on behalf of the Person by the Team upon approval of the Provider Human Rights Committee unless a guardian has been appointed by the Court with the legal authority to make end-of-life decisions for the Person.

(3) If a Person receives Waiver services through the

Division and elects the Medicaid hospice benefit and meets the program eligibility requirements in accordance with R414-14A-3, hospice shall become the primary service delivery program, including the primary case management program, for the care of the Person. All other Medicaid programs serving the Person at the time of hospice election, including Waivers, shall coordinate with the hospice case management team to determine the full scope of services that shall be provided from that point forward.

(a) Pursuant to R414-14A-7(A), a Person can continue to receive Division services through the Waiver program that are necessary to prevent institutionalization, are not duplicative of services covered by the hospice benefit, and do not conflict with the hospice plan of treatment.

(b) The Medicaid hospice benefit shall determine the actual number of times a Person can revoke and re-elect hospice services, which hospice Providers and services are available, and which Waiver services may continue concurrently with hospice services.

(c) If the Division wishes to initiate disenrollment of a Medicaid-funded Person from the Waiver based on the Person's election of hospice services, it shall be considered an involuntary disenrollment and will be subject to review and approval by the Department of Health, Division of Health Care Finance.

R539-3-10. Prohibited Procedures.

(1) The following procedures are prohibited for Division staff and Providers, including staff hired for Self-Administered Services, in all circumstances in supporting Persons receiving Division funding:

(a) Physical punishment, such as slapping, hitting, and pinching.

(b) Demeaning speech to a Person that ridicules or is abusive.

(c) Locked confinement in a room.

(d) Denial or restriction of access to assistive technology devices, except where removal prevents injury to self, others, or property as outlined in Section R539-3-6.

(e) Withholding or denial of meals, or other supports for biological needs, as a consequence or punishment for problems.

(f) Any Level II or Level III Intervention, as defined in R539-4-3(n) and R539-4-3(o), used as coercion, as convenience to staff, or in retaliation.

(g) Any procedure in violation of R495-876, R512-202, R510-302, 62A-3-301 thru 62A-3-321, and 62A-4a-402 thru 62A-4a-412 prohibiting abuse.

KEY: people with disabilities, rights

May 10, 2013

Notice of Continuation August 7, 2014

62A-5-102

62A-5-103

R590. Insurance, Administration.**R590-67. Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers.****R590-67-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement the Insurance Code.

R590-67-2. Application of Rule.

This rule is applicable to all domestic stock insurers having 100 or more stockholders: provided, however, that this rule may not apply to any insurer if 95% or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares are held by fewer than 500 stockholders. A domestic stock insurer which files with the Securities and Exchange Commission forms of proxies, consents and authorizations complying with the requirements of the Securities and Exchange Act of 1934 and Rule X-14 of the Securities and Exchange Commission shall be exempt from the provisions of this rule.

R590-67-3. Proxies, Consents and Authorizations.

No domestic stock insurer, or any director, office or employee of the insurer subject to Section 2, or any other person, may solicit, or permit the use of his name to solicit, by mail or otherwise, any proxy, consent or authorization of any stock of the insurer in contravention of this rule. The following documents are available from the Insurance Department:

A. "Proxy Form A", entitled "Information Required in Proxy Statement,"

B. "Proxy Form B", entitled "Information To Be Included in Statement Filed by or on Behalf of a Participant, Other Than the Insurer, In a Proxy Solicitation in an Election Contest."

R590-67-4. Disclosure of Equivalent Information.

Unless proxies, consents or authorizations of a stock of a domestic insurer subject to Section 3 of this rule are solicited by or on behalf of the management of the insurer from the holders of record of stock of the insurer in accordance with this rule and its schedules prior to any annual or other meeting, the insurer shall, in accordance with this rule or other rule, or both, as the commissioner may adopt, file with the commissioner and transmit to all stockholders of record, information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

R590-67-5. Definitions.

A. The definitions and instructions set out in Schedule SIS, as promulgated by the National Association of Insurance Commissioners, shall be applicable for purposes of this rule.

B. The terms "solicit" and "solicitation" for purposes of this rule shall include:

1. any request for a proxy, whether or not accompanied by or included in a form of proxy; or

2. any request to execute or not to execute, or to revoke, a proxy; or

3. the furnishing of a proxy or other communication to stockholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

C. The terms "solicit" and "solicitation" may not include:

1. any solicitation by a person of a stock of which he is the beneficial owner;

2. action by a broker or other person in respect to stock carried in his name or in the name of his nominee in forwarding to the beneficial owner of the stock soliciting material received from the company, or impartially instructing the beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy, or impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain

date; and

3. the furnishing of a form of proxy to a stockholder upon the unsolicited request of the stockholder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

R590-67-6. Information to be Furnished to Stockholders.

A. No solicitation subject to this rule may be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Proxy Form.

B. If the solicitation is made on behalf of the management of the insurer and relates to an annual meeting of stockholders at which directors are to be elected, each proxy statement furnished pursuant to Subsection A of this section shall be accompanied or preceded by an annual report, in preliminary or final form, to the stockholders containing the financial statements for the last fiscal year as are referred to in Schedule SIS under the heading "Financial Reporting to Stockholders." Subject to the foregoing requirements with respect to financial statements, the annual report to stockholders may be in any form deemed suitable by the management.

C. Two copies of each report sent to the stockholders pursuant to this section shall be mailed to the commissioner not later than the date on which the report is first sent or given to stockholder or the date on which preliminary copies of solicitation material are filed with the commissioner pursuant to Subsection A of Section 8, whichever date is later.

R590-67-7. Requirements as to Proxy.

A. The form of proxy:

1. shall indicate in boldface type whether or not the proxy is solicited on behalf of the management;

2. shall provide a specifically designated blank space for dating the proxy; and

3. shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management, or stockholders.

No reference need be made to proposals as to which discretionary authority is conferred pursuant to Subsection C of this section.

B. Means shall be provided in the proxy for the person solicited to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to in the proxy, other than elections to office. A proxy may confer discretionary authority with respect to matters where a choice is not so specified if the form of proxy states in boldface type how it is intended to vote the shares or authorization represented by the proxy in each case.

C. A proxy may confer discretionary authority with respect to other matters which may come before the meeting, provided the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any other matters are to be presented for action at the meeting and provided further that a specific statement to that effect is made in the proxy statement or in the form of proxy.

D. No proxy may confer authority:

1. to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement; or

2. to vote at any annual meeting other than the next annual meeting, or any adjournment of the annual meeting, to be held after the date on which the proxy statement and form of proxy are first sent or given to stockholders.

E. The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the proxy will be voted and that where the person solicited specifies by means of ballot provided pursuant to Subsection B of this section, a choice with respect to any matter to be acted upon, the vote will

be in accordance with the specifications so made.

F. The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter with appropriate headings. All printed proxy statements shall be clearly and legibly presented.

R590-67-8. Material Required to be Filed.

A. Two preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to stockholders concurrently shall be filed with the commissioner at least ten days prior to the date definitive copies of the material are first sent or given to stockholders, or the shorter period prior to that date as the commissioner may authorize upon a showing of good cause.

B. Two preliminary copies of any additional soliciting material relating to the same meeting or subject matter to be furnished to stockholders subsequent to the proxy statements shall be filed with the commissioner at least two days, exclusive of Saturdays, Sundays or holidays, prior to the date copies of this material are first sent or given to stockholders or a shorter period prior to the date the commissioner may authorize upon a showing of good cause.

C. Two definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which this material is furnished to stockholders, shall be filed with, or mailed for filing to, the commissioner not later than the date the material is first sent or given to the stockholders.

D. Where any proxy statement, form of proxy or other material filed pursuant to these rules is amended or revised, two of the copies shall be marked to clearly show the changes.

E. Copies of replies to inquiries from stockholders requesting further information and copies of communications, which do no more than request that forms of proxy solicited be signed and returned, need not be filed pursuant to this section.

F. Notwithstanding the provisions of Subsections A and B of this section and of Subsection E of Section 11, copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the commissioner prior to use or publication. Definitive copies shall be filed with or mailed for filing to the commissioner as required by Subsection C of this section, not later than the date the material issued or published. The provisions of Subsections A and B of this section and Subsection E of Section 11 shall apply to any reprints or reproductions of all or any part of the material.

R590-67-9. False or Misleading Statements.

No solicitation subject to this rule shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements in the solicitation not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

R590-67-10. Prohibition of Certain Solicitations.

No person making a solicitation which is subject to this rule may solicit any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the stockholder.

R590-67-11. Special Provisions Applicable to Election Contests.

A. Applicability. This section shall apply to any

solicitation to this rule by any person or group for the purpose of opposing a solicitation subject to this rule by any other person or group with respect to the election or removal of directors at any annual or special meeting of stockholders.

B. Participant or Participant in a Solicitation.

1. For purposes of this section the term "participant" and "participant in a solicitation" include:

(a) the insurer;

(b) any director of the insurer, and any nominee for whose election as a director proxies are solicited; and

(c) any other person, acting alone or with one or more other persons, committees or groups, in organizing, directing or financing the solicitation.

2. For the purposes of this section the terms "participant" and "participant in a solicitation" do not include:

(a) a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of stock and who is not otherwise a participant;

(b) any person or organization retained or employed by a participant to solicit stockholders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;

(c) any person employed in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the performance of his duties in the course of employment;

(d) any person regularly employed as an officer or employee of the insurer or any of its subsidiaries or affiliates whose is not otherwise a participant; or

(e) any officer or director of, or any person regularly employed by any other participant, if the officer, director, or employee is not otherwise a participant.

C. Filing of Information Required by Proxy Form.

1. No solicitation subject to this section may be made by any person other than the management of an insurer unless at least five business days prior to, or a shorter period as the commissioner may authorize upon showing of good cause, there has been filed with the commissioner, by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified by Proxy Form and a copy of any material proposed to be distributed to stockholders in furtherance of the solicitation. Where preliminary copies of any materials are filed, distribution to stockholders should be deferred until the commissioner's comments have been received and complied with.

2. Within five business days after a solicitation subject to this section is made by the management of an insurer, or longer period as the commissioner may authorize upon a showing of good cause, there shall be filed with the commissioner by or on behalf of each participant in the solicitation, other than the insurer, and by or on behalf of each management nominee for director, a statement in duplicate containing the information specified by Proxy Form.

3. If any solicitation on behalf of management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this section in opposition to it, a statement in duplicate containing the information specified in Proxy Form shall be filed with the commissioner by or on behalf of each participant in the prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the solicitation in opposition to it.

4. If, subsequent to the filing of the statements required by Subsections A, B, and C of this section, additional persons become participants in a solicitation subject to this rule, there shall be filed with the commissioner, by or on behalf of each person, a statement in duplicate containing the information specified by Proxy Form, within three business days after the person becomes a participant, or the longer period as the

Department may authorize upon a showing of good cause.

5. If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the commissioner.

6. Each statement and amendment filed pursuant to this paragraph shall be part of the public files of the commissioner.

D. Solicitations Prior to Furnishing Required Written Proxy Statement.

Notwithstanding the provisions of Subsection A of Section 6, a solicitation subject to this section may be made prior to furnishing stockholders a written proxy statement containing the information specified in Proxy Form with respect to the solicitation, provided that:

1. the statements required by Subsection C of this section are filed by or on behalf of each participant in the solicitation;

2. no form of proxy is furnished to stockholders prior to the time the written proxy statement required by Subsection A of Section 6 is furnished to the persons provided that Subsection B of this section may not apply where a proxy statement then meeting the requirements of Proxy Form has been furnished to stockholders;

3. the information specified in Subsection 2 and 3 of C of this section, of the statements required by Subsection C of this section to be filed by each participant, or an appropriate summary of it, are included in each communication sent or given to stockholders in connection with the solicitation; and

4. a written proxy statement containing the information specified in Proxy Form with respect to a solicitation is sent or given stockholders at the earliest practicable date.

E. Solicitations Prior to Furnishing Required Written Proxy Statement - Filing Requirements.

Two copies of any soliciting material proposed to be sent or given to stockholders prior to the furnishing of the written proxy statement required by Subsection A of Section 6 shall be filed with the commissioner in preliminary form at least five business days prior to the date definitive copies of the material are first sent or given to the persons, or shorter period as the commissioner may authorize upon a showing of good cause.

F. Application of This Section to Report.

Notwithstanding the provisions of Subsections B and C of Section 6, two copies of any portion of the report referred to in subsection two of section five which comments upon or refers to any solicitation subject to this section, or to any participant in any solicitation subject to this section, or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the report are first sent or given to stockholders.

R590-67-12. Separability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

**KEY: insurance law
1989**

31A-2-201

Notice of Continuation August 29, 2014

R590. Insurance, Administration.**R590-76. Health Maintenance Organizations and Limited Health Plans.****R590-76-1. Authority.**

This rule is issued pursuant to the authority set forth in Title 31A, Chapter 8, Health Maintenance Organizations (HMOs) and Limited Health Plans.

R590-76-2. Purpose.

The purpose of this rule is to implement Chapter 8 of Title 31A to assure the availability, accessibility and quality of services provided by HMOs and to provide reasonable standards for terms and provisions contained in HMO group and individual contracts and evidences of coverage.

R590-76-3. Applicability and Scope.

This rule applies to all organizations defined in 31A-8-101(8). In the event of conflict between the provisions of this regulation and the provisions of any other regulation issued by the commissioner, the provisions of this regulation shall be controlling. This rule also applies to all HMO contracts covering individuals and groups issued or renewed and effective on or after January 1, 2003.

R590-76-4. HMO Definitions.

A group or individual contract and evidence of coverage delivered or issued for delivery to any person in this state by an HMO required to obtain a certificate of authority in this state shall contain definitions respecting the matters set forth below. The definitions shall comply with the requirements of this section. Definitions other than those set forth in this regulation may be used as appropriate providing that they do not contradict these requirements. As used in this regulation and as used in the group or individual contract and evidence of coverage:

(1) "Coinsurance" is the enrollee's cost-sharing amount expressed as a percentage of covered charges.

(2) "Copayment" means, other than coinsurance, the amount an enrollee must pay in order to receive a specific service that is not fully prepaid.

(3) "Deductible" means the amount an enrollee is responsible to pay out-of-pocket before the HMO begins to pay the costs or provide the services associated with treatment.

(4) "Directors" mean the executive director of Department of Health or his authorized representative, and the director of the Health Division of the Utah Insurance Department.

(5) "Eligible dependent" means any member of an enrollee's family who meets the eligibility requirements set forth in the contract.

(6) "Emergency care services" means services for an emergency medical condition as defined in 31A-22-627(3).

(a) Within the service area, emergency care services shall include covered health care services from non-affiliated providers only when delay in receiving care from the HMO could reasonably be expected to cause severe jeopardy to the enrollee's condition.

(b) Outside the service area, emergency care services include medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the geographical limits of the HMO's service area.

(7) "Evidence of coverage" means a certificate or a statement of the essential features and services of the HMO coverage that is given to the subscriber by the HMO or by the group contract holder.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers,

and rehabilitation and other therapeutic health settings which operate within their specific licensure requirements.

(9) "Grievance" means a written complaint submitted in accordance with the HMO's formal grievance procedure by or on behalf of the enrollee regarding any aspect of the HMO relative to the enrollee.

(10) "Group contract" means a contract for health care services by which its terms limit eligibility to enrollees of a specified group.

(11) "Group contract holder" means the person to which a group contract has been issued.

(12) "Incidental coverage" means a contract or endorsement offered by an HMO that provides limited health plan benefits as defined in Subsection 31A-8-101(6)(a).

(13) "Individual contract" means a contract for health care services issued to and covering an individual. The individual contract may include coverage for dependents of the subscriber.

(14) "Medical necessity" or "medically necessary" means:

(a) Health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(a) scientific evidence;

(b) professional standards; and

(c) expert opinion.

(15) "Out-of-area services" means the health care services that an HMO covers when its enrollees are outside of the service area.

(16) "Physician" means a duly licensed doctor of medicine or osteopathy practicing within the scope of the license.

(17) "Primary care physician" means a physician who supervises, coordinates, and provides initial and basic care to enrollees, and who initiates their referral for specialist care and maintains continuity of patient care.

(18) "Scientific evidence" means:

(a) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(b) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(c) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(19) "Service area" means the geographical area within a 40-mile radius of the HMO's health care facility.

(20) "Subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the HMO, or in the case of an

individual contract, the person in whose name the contract is issued.

R590-76-5. Requirements for HMO Contracts and Evidence of Coverage.

(1)(a) Individual contracts. Each subscriber shall be entitled to receive an individual contract and evidence of coverage in a form that has been filed with the commissioner.

(b) Group contracts. Each group contract holder shall be entitled to receive a group contract that has been filed with the commissioner.

(c) Group contracts, individual contracts and evidences of coverage shall be delivered or issued for delivery to subscribers or group contract holders within a reasonable time after enrollment, but not more than 30 days from the later of the effective date of coverage or the date on which the HMO is notified of enrollment.

(2) HMO information. The group or individual contract and evidence of coverage shall contain the name, address and telephone number of the HMO, and where and in what manner information is available as to how services may be obtained. A telephone number within the service area for calls, without charge to members, to the HMO's administrative office shall be made available and disseminated to enrollees to adequately provide telephone access for enrollee services, problems or questions. The group or individual contract and evidence of coverage may indicate the manner in which the number will be disseminated rather than list the number itself.

(3) Eligibility requirements. The group or individual contract and evidence of coverage shall contain eligibility requirements indicating the conditions that shall be met to enroll. The forms shall include a clear statement regarding coverage of dependents and newborn children.

(4) Benefits and services within the service area. The group or individual contract and evidence of coverage shall contain a specific description of benefits and services available within the service area.

(5) Emergency care benefits and services. The group or individual contract and evidence of coverage shall contain a specific description of benefits and services available for emergencies 24 hours a day, 7 days a week, including disclosure of any restrictions on emergency care services. No group or individual contract and evidence of coverage shall limit the coverage of emergency services within the service area to affiliated providers only.

(6) Out-of-area benefits and services. Other than emergency care, if benefits and services are covered outside the service area, a group or individual contract and evidence of coverage shall contain a specific description of that coverage.

(7) Copayments, coinsurance, and deductibles. The group or individual contract and evidence of coverage shall contain a description of any copayments, coinsurance, or deductibles that must be paid by enrollees.

(8) Limitations and exclusions. The group or individual contract and evidence of coverage shall contain a description of any limitations or exclusions on the services or benefits, including any limitations or exclusions due to preexisting conditions or waiting periods.

(9) Claims procedures. The group or individual contract and evidence of coverage shall contain procedures for filing claims that include:

- (a) any required notice to the HMO;
- (b) any required claim forms, including how, when and where to obtain them;
- (c) any requirements for filing proper proofs of loss;
- (d) any time limit of payment of claims;
- (e) notice of any provisions for resolving disputed claims, including arbitration; and
- (f) a statement of restrictions, if any, on assignment of sums

payable to the enrollee by the HMO.

(10) Enrollee grievance procedures and arbitration. In compliance with R590-76-8(4), the group or individual contract and evidence of coverage shall contain a description of the HMO's method for resolving enrollee grievances, including procedures to be followed by the enrollee in the event any dispute arises under the contract, including any provisions for arbitration.

(11) Extension and conversion of coverage. A group contract, and evidence of coverage shall contain a conversion provision which provides each enrollee the right to a conversion policy and/or extend coverage to a contract as set forth in Chapter 22 of Title 31A, Part VII.

(12) Coordination of benefits. The group or individual contract and evidence of coverage may contain a provision for coordination of benefits that shall be consistent with that applicable to other carriers in the jurisdiction. Any provisions or rules for coordination of benefits established by an HMO shall not relieve an HMO of its duty to provide or arrange for a covered health care service to an enrollee because the enrollee is entitled to coverage under any other contract, policy or plan, including coverage provided under government programs.

(13) Description of the service area. The group or individual contract and evidence of coverage shall contain a description of the service area.

(14) Entire contract provision. The group or individual contract shall contain a statement that the contract, all applications and any amendments thereto shall constitute the entire agreement between the parties. No portion of the charter, bylaws or other document of the HMO shall be part of the contract unless set forth in full in the contract or attached to it. However, the evidence of coverage may be attached to and made a part of the group contract.

(15) Term of coverage. The group or individual contract and evidence of coverage shall contain the time and date or occurrence upon which coverage takes effect, including any applicable waiting periods, or describe how the time and date or occurrence upon which coverage takes effect is determined. The contract and evidence of coverage shall also contain the time and date or occurrence upon which coverage will terminate.

(16) Cancellation or termination. The group or individual contract and evidence of coverage shall contain the conditions upon which cancellation or termination may be effected by the HMO, the group contract holder or the subscriber.

(17) Renewal. The group or individual contract and evidence of coverage shall contain the conditions for, and any restrictions upon, the subscriber's right to renewal.

(18) Reinstatement of group or individual contract holder. If an HMO permits reinstatement of a group or individual, the contract and evidence of coverage shall include any terms and conditions concerning reinstatement. The contract and evidence of coverage may state that all reinstatements are at the option of the HMO and that the HMO is not obligated to reinstate any terminated contract.

(19) Conformity with State Law. A group or individual contract and evidence of coverage delivered or issued for delivery in this state shall include a provision that states that any provision not in conformity with Chapter 8 of Title 31A, this regulation or any other applicable law or regulation in this state shall not be rendered invalid but shall be construed and applied as if it were in full compliance with the applicable laws and regulations of this state.

(20) Definitions. All definitions used in the group or individual contract and evidence of coverage shall be in alphabetical order.

R590-76-6. Unfair Discrimination.

An HMO shall not unfairly discriminate against an enrollee

or applicant for enrollment on the basis of the age, sex, race, color, creed, national origin, ancestry, religion, marital status or lawful occupation of an enrollee, or because of the frequency of utilization of services by an enrollee. An HMO shall not expel or refuse to re-enroll any enrollee nor refuse to enroll individual members of a group on the basis of an individual's or enrollee's health status or health care needs, except for a policy which contains a lifetime policy maximum and such maximum has been reached. However, nothing shall prohibit an HMO from setting rates, establishing a schedule of charges in accordance with actuarially sound and appropriate data, or appropriately applying policy provisions in compliance with the Utah Insurance Code.

R590-76-7. HMO Services.

(1) Access to Care.

(a) An HMO shall establish and maintain adequate arrangements to provide health services for its enrollees, including:

- (i) reasonable proximity to the business or personal residences of the enrollees so as not to result in unreasonable barriers to accessibility;
- (ii) reasonable hours of operation and after-hours services;
- (iii) emergency care services available and accessible within the service area 24 hours a day, 7 days a week; and
- (iv) sufficient providers, personnel, administrators and support staff to assure that all services contracted for will be accessible to enrollees on an appropriate basis without delays detrimental to the health of enrollees.

(b) If a primary care physician is required in order to obtain covered services, an HMO shall make available to each enrollee a primary care physician and provide accessibility to medically necessary specialists through staffing, contracting or referral.

(c) An HMO shall have written procedures governing the availability of services utilized by enrollees, including at least the following:

- (i) well-patient examinations and immunizations;
- (ii) treatment of emergencies;
- (iii) treatment of minor illness; and
- (iv) treatment of chronic illnesses.

(2) Basic health care services. An HMO shall provide, or arrange for the provision of, as a minimum, basic health care services, which shall include the following:

- (a) emergency care services;
- (b) inpatient hospital services, meaning medically necessary hospital services including:
 - (i) room and board;
 - (ii) general nursing care;
 - (iii) special diets when medically necessary;
 - (iv) use of operating room and related facilities;
 - (v) use of intensive care units and services;
 - (vi) x-ray, laboratory and other diagnostic tests;
 - (vii) drugs, medications, biologicals;
 - (viii) anesthesia and oxygen services;
 - (ix) special nursing when medically necessary;
 - (x) physical therapy, radiation therapy and inhalation therapy;
 - (xi) administration of whole blood and blood plasma; and
 - (xii) short-term rehabilitation services;
- (c) inpatient physician care services, meaning medically necessary health care services performed, prescribed, or supervised by physicians or other providers including diagnostic, therapeutic, medical, surgical, preventive, referral and consultative health care services;

(d) Outpatient medical services, meaning preventive and medically necessary health care services provided in a physician's office, a non-hospital-based health care facility or at a hospital. Outpatient medical services shall include:

- (i) diagnostic services;
- (ii) treatment services;
- (iii) laboratory services;
- (iv) x-ray services;
- (v) referral services;
- (vi) physical therapy, radiation therapy and inhalation therapy; and
- (vii) preventive health services, which shall include at least a range of services for the diagnosis of infertility, well-child care from birth, periodic health evaluations for adults, screening to determine the need for vision and hearing correction, and pediatric and adult immunizations in accordance with accepted medical practice;

(e) Coverage of inborn metabolic errors as required by 31A-22-623 and Rule R590-194, Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism, and benefits for diabetes as required by 31A-22-626 and Rule R590-200, Diabetes Treatment and Management.

(3) Out-of-area benefits and services. Other than emergency care, if the contract provides out-of-area services, they shall be subject to the same copayment, coinsurance, and deductible requirements set forth in R590-76-5(7).

(4)(a) An HMO may offer a contract or endorsement that provides incidental coverage.

(b) An incidental coverage contract or endorsement is exempt from the basic health care services and emergency care requirements set forth in this rule.

(c) An HMO offering an incidental benefit contract or endorsement may offer all of the basic health care services.

R590-76-8. Other HMO Requirements.

(1) Provider lists.

(a) An HMO shall provide its subscribers with a list of the names and locations of all of its providers no later than the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon reenrollment.

(b) Upon notification to an HMO that a provider is no longer affiliated, the HMO shall within 30 days:

- (i) notify enrollees who are receiving ongoing care; and
- (ii) update any applicable web site provider lists.

(c) Subject to the approval of the commissioner, an HMO may provide its subscribers with a list of providers or provider groups for a segment of the service area. However, a list of all providers shall be made available to subscribers upon request.

(d) Provider lists shall contain a notice regarding the availability of the listed primary care physicians. The notice shall be in not less than 12-point type and be placed in a prominent place on the list of providers. The notice shall contain the following or similar language:

"Enrolling in (name of HMO) does not guarantee services by a particular provider on this list. If you wish to receive care from specific providers listed, you should contact those providers to be sure that they are accepting additional patients for (name of HMO)."

(2) Description of the services area. An HMO shall provide its subscribers with a description of its service area no later than the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon request thereafter. If the description of the service area is changed, the HMO shall provide at such time a new description of the service area to its affected subscribers within 30 days.

(3) Copayments, coinsurance, and deductibles. An HMO may require copayments, coinsurance, or deductibles of enrollees as a condition for the receipt of health care services. Copayments, coinsurance, and deductibles shall be the only allowable charge, other than premiums, insurers may assess to subscribers, unless otherwise allowed by law.

(4) Grievance procedure. A grievance procedure in compliance with 31A-22-629 and Rule R590-203, Health Care

Benefit Plans-Grievance and Voluntary Independent Review Procedures Rule, to resolve an adverse benefit determination, shall be established and maintained by an HMO to provide reasonable procedures for the prompt and effective resolution of written grievances.

(5) Provider contracts. All provider contracts must be on file and available for review by the commissioner and the director of the UDOH.

R590-76-9. Quality Assurance.

(1) Quality assurance plan.

(a) Each HMO shall develop a quality assurance plan. The plan shall be designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

(b) Certification of quality assurance plan.

(i) A new HMO shall arrange and pay for a review and certification of its quality assurance plan no later than 18 months after receiving a Certificate of Authority and commencing operation.

(ii) An existing HMO shall arrange a pay for a review and certification of its quality assurance plan every three years unless required sooner by the certifying entity.

(iii) Reviews shall be conducted by the National Committee of Quality Assurance (NCQA), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Accreditation HealthCare Commission (URAC), formerly known as the Utilization Review Accreditation Commission, Health Insight, or other entities as approved by the commissioner. Reviews conducted for the federal government shall satisfy these requirements if the requirements of this subsection are met.

(iv) Each HMO shall arrange for the directors to receive a copy of the review findings, recommendations, and certification, or notice of non-approval, of the quality assurance plan. This material shall be sent directly from the certifying entity to the directors. Certification status and review materials will be maintained as a protected record by the directors.

(v) Each HMO shall implement clinical and procedural requirements made by the certifying entity after the findings are received by the HMO.

(c) Each year on or before July 1, an HMO shall file to the directors a written report of the effectiveness of its internal quality control. The report must include a copy of the HMO's quality assurance plan.

(2) Quality assurance audits. The commissioner may audit an HMO's quality control system. Such audit shall be performed by qualified persons designated by the commissioner.

(a) The HMO shall comply with reasonable requests for information required for the audit and necessary to:

(i) measure health care outcomes according to established medical standards;

(ii) evaluate the process of providing or arranging for the provision of patient care;

(iii) evaluate the system the HMO uses to conduct concurrent reviews and preauthorized medical care;

(iv) evaluate the system the HMO uses to conduct retrospective reviews of medical care; and

(v) evaluate the accessibility and availability of medical care provided or arranged for by the HMO.

(b) Information furnished shall only be used in accordance with 31A-8-404.

(3) Internal peer review. The HMO shall show written evidence of continuing internal peer reviews of medical care given. The program must provide for review by physicians and other health professionals; have direct accountability to senior management; and have resources specifically budgeted for quality assessment, monitoring, and remediation.

R590-76-10. Reporting Requirements and Fee Payments.

Section 31A-3-103 and 31A-4-113 apply to organizations. Both types of entities shall submit their annual reports on the National Association of Insurance Commissioner's (NAIC) blanks that have been adopted for HMOs. In addition, all HMOs shall submit the information asked for in the annual statistical report required by the UDOH. The annual statement blank will be filed with the Insurance Department and the UDOH by March 1 each year.

R590-76-11. Financial Condition.

(1) Qualified assets. In determining the financial condition of any organization, only the following assets may be used:

(a) assets as determined to be admitted in the Accounting Practices and Procedures Manual published by the NAIC; and

(b) other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the provision of health care, at values determined by him/her.

(2) Investments. Investments of organizations shall be consistent with Title 31A, Chapter 18.

(3) Liability insurance. Evidence of adequate general liability and professional liability insurance, or a plan for self-insurance approved by the commissioner, must be maintained by the organization. Organizations may only contract with providers of health services that have liability insurance.

R590-76-12. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-76-13. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such 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: HMO insurance

November 24, 2009

Notice of Continuation August 29, 2014

31A-2-201

R590. Insurance, Administration.**R590-79. Life Insurance Disclosure Rule.****R590-79-1. Authority.**

This rule is adopted and promulgated pursuant to Section 31A-2-201(3) wherein the commissioner may make rules to implement the provisions of Title 31A, and Section 31A-22-425(1) wherein the commissioner may make rules to establish standards for buyer's guides and disclosures.

R590-79-2. Purpose.

The purpose of this rule is to require insurers to deliver to purchasers of life insurance, information which will improve the purchaser's ability to select a plan of life insurance most appropriate for the purchaser's needs and improve the purchaser's understanding of the basic features of the policy being purchased or under consideration for purchase.

This rule does not prohibit the use of additional material which is not in violation of this rule or any other statute or rule.

R590-79-3. Scope.

Except as hereinafter exempted, this rule shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This rule shall apply to any issuer of life insurance contracts including fraternal benefit societies.

Unless otherwise specifically included, this rule shall not apply to:

- A. annuities;
- B. credit life insurance;
- C. group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements. These disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy);
- D. life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), as amended; or
- E. variable life insurance under which the amount and duration of the death benefits and cash values vary according to the investment experience of a separate account.

R590-79-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

- A. A Buyer's Guide means a document which contains, and is limited to, the language contained in the "Life Insurance Buyer's Guide," as adopted and amended by, and available from the National Association of Insurance Commissioners, 2000 edition, which is incorporated in this rule by reference.
- B. Current Scale of Nonguaranteed Elements means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.
- C. Generic name means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.
- D. Nonguaranteed Elements means the premiums, credited interest rates including any bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.
- E. Policy Data means a display or schedule of numerical values, both guaranteed and nonguaranteed for each policy year or a series of designated policy years of the following information: illustrated annual, other periodic, and terminal dividends; premiums; death benefits; cash surrender values; and endowment benefits.

F.(1) Policy summary means a written statement describing only the guaranteed elements of the policy. A policy

summary must include the following information:

(a) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.

(b) The name and address of the insurance producer, or, if no producer is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.

(c) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

(d) The generic name of the basic policy and each rider.

(e) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the tenth and twentieth policy years, and at least one age from 60 through 65 or maturity, whichever is earlier.

(i) The annual premium for the basic policy.

(ii) The annual premium for each optional rider.

(iii) Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

(iv) Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.

(v) Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall indicate the maximum annual percentage rate, and shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.

(g) The date on which the policy summary is prepared.

(2) The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in item F.(1)(e) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and may not be displayed as a blank space.

(3) If an illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, is used in the sale of a policy, a policy summary is not required.

G. Preneed Funeral Contract or Prearrangement means an agreement by or for an individual before that individual's death relating to the purchase or provisions of specific funeral or cemetery merchandise or services.

R590-79-5. Disclosure Requirements.

A. The insurer shall provide a Buyer's Guide and either a policy summary or a life illustration that is in compliance with Rule R590-177, Life Insurance Illustrations Rule, when the policy is delivered or prior to delivery of the policy if so requested.

B. The insurer shall provide a Buyer's Guide to any prospective purchaser upon request.

C. Flexible Premium and Benefit Policies. For policies commonly called "universal life insurance" and similarly structured policies, the policy summary shall indicate when the policy will expire based on the interest rates and mortality rates and other charges guaranteed in the policy and the anticipated or assumed annual premiums shown in the policy summary.

D. Requirements applicable to existing policies.

Upon request by the policyholder, the insurer shall furnish either policy data or an in force illustration as follows:

(1) For policies issued prior to January 1, 1997, the effective date of R590-177, Life Insurance Illustrations Rule, the insurer shall furnish policy data, or at its option, an in force illustration meeting the requirements of R590-177, Life Insurance Illustrations Rule.

(2) For policies issued on or after January 1, 1997 that were declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of R590-177, Life Insurance Illustrations Rule.

(3) If the policy was issued on or after January 1, 1997, and declared to be used with an illustration, an in force illustration shall be provided.

(4) Unless otherwise requested, the policy data shall be provided for 20 consecutive years beginning with the previous policy anniversary. The statement of policy data shall include nonguaranteed elements according to the current scale, the amount of outstanding policy loans, and the current policy loan interest rate. Policy values shown shall be based on the current application of nonguaranteed elements in effect at the time of the request. The insurer may charge a reasonable fee for the preparation of the statement after providing one annually without charge.

E. Preneed Funeral Contracts or Prearrangements. The following information shall be adequately disclosed at the time an application is made prior to accepting the applicant's initial premium or deposit, for a preneed funeral contract or prearrangement which is funded or to be funded by a life insurance policy:

(1) The fact that a life insurance policy is involved or being used to fund a prearrangement;

(2) The nature of the relationship among the soliciting producer or producers, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;

(3) The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

(4) The impact on the prearrangement:

(a) of any changes in the life insurance policy including but not limited to changes in the assignment, beneficiary designation or use of the proceeds;

(b) of any penalties to be incurred by the policyholder as a result of failure to make premium payments; and

(c) of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

(5) A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;

(7) Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee;

(8) The fact that a sales commission or other form of compensation is being paid and if so, the identity of such individuals or entities to whom it is paid.

R590-79-6. General Requirements.

A. Each insurer shall maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer for use pursuant to this rule. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.

B. A producer shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he or she is acting as a life insurance producer and inform the prospective purchaser of the full name of the insurance company which the producer is representing to the buyer. In sales situations in which a producer is not involved, the insurer shall identify its full name. A presentation commences with an initial contact with a prospective purchaser in person, by telephone, by electronic communication, or by way of printed materials, particularly where rates or values are quoted or when policy or contract representations are made.

C. Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used unless properly licensed if required or in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case and represented by way of required disclosure.

D. Any reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements (use appropriate special term such as "current dividend" or "current rate" scale.) If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in any reference to nonguaranteed elements. A presentation or depiction of a policy issued on or after January 1, 1997, that includes nonguaranteed elements over a period of years shall be governed by R590-177, Life Insurance Illustrations Rule.

E. For a life insurance policy or certificate with a death benefit not exceeding \$15,000, the insurer shall provide disclosure of the following:

(1) limited death benefits whenever a policy limits death benefits during a period following the inception date of coverage;

(2) the possibility that premiums paid over several years may exceed the death benefit whenever that possibility exists.

The disclosure shall be provided to the applicant no later than delivery of the policy or certificate.

F. The policy summary, the life illustration that is subject to the requirements of R590-177, Life Insurance Illustrations Rule, and all other sales materials must be complete, consistent, and not misleading. If asterisks are used to reference footnotes, the asterisk must be clear and easily seen.

G. For the purposes of this rule, the annual premium for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

H. If the policy will lapse under the guaranteed assumptions unless a premium higher than the planned premium is paid, that fact must be disclosed and the date, policy duration, or attained age of lapse must be disclosed in the policy summary and any periodic report.

R590-79-7. Failure to Comply.

Failure of an insurer to provide or deliver a Buyer's Guide and either a policy summary or life illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, as provided in this rule shall constitute an omission which

misrepresents the benefits, advantages, conditions or terms of an insurance policy.

R590-79-8. Severability.

If any provision of this rule or application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances shall not be affected.

R590-79-9. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-79-10. Enforcement Date.

The commissioner will begin enforcing this revised rule 45 days after its effective date.

KEY: insurance law

November 24, 2009

Notice of Continuation August 20, 2014

31A-2-201

R590. Insurance, Administration.**R590-83. Unfair Discrimination on the Basis of Sex or Marital Status.****R590-83-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which empowers the Commissioner to enforce Title 31A and to make rules to implement its provisions, and Subsection 31A-23a-402(8), which empowers the commissioner to define and prohibit unfair marketing practices.

R590-83-2. Purpose.

The purpose of this rule is to identify and define certain practices which the commissioner finds are unfair and discriminatory.

R590-83-3. Scope.

This rule applies to all new or renewal insurance contracts offered for sale in Utah.

R590-83-4. Availability Requirements and Prohibited Transactions.

Availability of any insurance contract may not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, condition or type of coverage may not be restricted, modified, excluded or reduced on the basis of the sex or marital status of the insured or prospective insured, except marital status may be considered for the purpose of defining eligibility for dependent or family coverage. An insurer may treat a polygamous relationship differently than a monogamous relationship for purposes of defining or providing dependent or family coverage provided that the treatment reflects reasonable treatment of the interests of the affected parties and safeguards the economic interests of the insurer and other policyholders or prospective policyholders. Any insurer or representative of an insurer acting in contravention of this rule shall be deemed to have engaged in an unfair or deceptive act or practice as provided by Chapter 23a, Title 31A. Examples of the practices prohibited by this section include:

- (a) denying, canceling or refusing to renew coverage, or providing coverage on different terms, because the insured or prospective insured is residing with another person not related by blood or marriage;
- (b) offering coverage to males gainfully employed at home, employed part-time or employed by relatives while denying or offering reduced coverage to females similarly employed;
- (c) reducing disability benefits for females who become disabled while not gainfully employed full-time outside the home when a similar reduction is not applied to males;
- (d) denying females waiver of premium provisions that are available to males or offering the provisions to females only for contact limits that are lower than those available to males;
- (e) refusing to offer maternity benefits to insureds or prospective insureds purchasing individual contracts when comparable family coverage contracts offer maternity benefits;
- (f) denying, under group contracts, dependents coverage to husbands of female employees when dependent's coverage is available to wives of male employees;
- (g) offering coverage to males in certain occupations while denying coverage or offering more limited coverage to females in the same occupational categories;
- (h) offering males higher benefit levels or longer benefit periods, or both, than are offered to females in the same classifications;
- (i) offering contracts containing different definitions of disability for females and males in the same classifications;
- (j) offering contracts containing different waiting and elimination periods for females and males;

(k) requiring female applicants to submit to medical examinations while not requiring males to submit to the examinations for the same coverage;

(l) establishing different benefit options for females and males;

(m) denying to divorced or single persons coverage available to married persons;

(n) limiting the amount of coverage available to an insured or prospective insured based upon the person's marital status;

(o) denying employees of one sex insurance benefits that are offered to dependents who are of the same sex as the employees;

(p) denying a married or separated female the right to obtain or continue coverage in her own name when the same does not apply to males;

(q) establishing different issue age requirements for females and males;

(r) establishing different occupational classifications for females and males;

(s) denying coverage to unwed persons or their dependents, or both;

R590-83-5. Class Rating Differentials.

The establishment of reasonable and consistently applied class rating differentials does not constitute a practice prohibited by Section 4. This rule may not be deemed to prohibit charging different premium rates on the basis of sex.

R590-83-6. Severability.

If any provision of this rule is held invalid, it may not affect the provisions of this rule that can be given effect, and to that extent, the provisions of this rule are declared to be severable.

KEY: insurance law**1989****Notice of Continuation August 20, 2014****31A-23a-402****31A-2-201**

R590. Insurance, Administration.**R590-127. Rate Filing Exemptions.****R590-127-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to the general authority granted under Section 31A-2-201(3), to adopt rules for the implementation of the Utah Insurance Code, and pursuant to Section 31A-19a-103, which specifically authorizes the commissioner to exempt any market segment from any or all of the provisions of Chapter 19a of Title 31A.

R590-127-2. Purpose.

Section 31A-19a-203 requires that all insurers and rate service organizations to which Chapter 19a applies file all rates and supplementary rate information, which includes any manual or plan of rates, classification, rating schedule, rating rule, and rate-related underwriting rule, with the Insurance Commissioner within 30 days of the designated effective date. No exception is made in the statute for "(a) rates" or "refer to company" rates or rating plans for specialized or individual risks. All insurers using any of these types of rates or plans would be doing so in violation of the statute.

The purpose of this rule is to define these rates and plans, to make certain exemptions with regards to the filing requirements of Section 31A-19a-203, and to establish certain procedures for that market segment which uses these types of rates or plans.

R590-127-3. Scope.

This rule applies to all insurers licensed to write liability insurance, professional liability insurance, property insurance, vehicle liability and physical damage insurance and workers' compensation insurance, as defined in Section 31A-1-103.

R590-127-4. Definitions.

This rule is concerned with terminology which is commonly used in the insurance industry but for which no decisive definitions have been established. To promote understanding, some explanation is required.

Manual classifications, prospective loss costs and rates are developed by pooling vast amounts of statistical data. They are, by nature, average. For many types of risks there does not exist enough statistical data to develop credible prospective loss costs, manual rates and classifications. Over time the industry has developed ways of dealing with these unconventional risks. The procedure for rating an exposure that does not have a published prospective loss cost or manual rate is termed "(a) rating". The term is derived from the fact that the manual contains the symbol "(a)" or the words "refer to company" opposite the applicable code number instead of a specific dollar and cent rate. There are generally three types of situations which require (a) rates: (1) For a class in which the risks are so different from each other that no single manual rate could be representative of all of them; (2) where a class does not develop enough experience to warrant any credibility for ratemaking purposes; or (3) risks that involve a new product or coverage for which there is no past experience nor appropriate analogy to similar exposures for ratemaking purposes.

For the purpose of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, Section 31A-19a-103, and in addition, the following:

(1) "(a) rate" means a rating rule or a rate expressed as the symbol "(a)" or the words "refer to company" listed opposite a classification code on the manual rule and rate pages of the Commercial Lines Manual.

(2) "(a) rating," special risk rating, means the procedure an underwriter uses for classifying and rating any risk which presents unique or unusual conditions, exposures or hazards for which he feels a commercial lines manual classification or rate

is not appropriate.

(3) "Commercial Lines Manual" means the manual of rates, classifications and underwriting rules for commercial lines insurance, including the plan known as the Highly Protected Risk Plan, filed with the commissioner by the Insurance Services Office, Inc. For the purpose of this rule, this term shall include any similar rating plan or manual, including Highly Protected Risk Plans or large risk property rating plans, filed with the commissioner by other rate service organizations or individual insurers.

(4) "Excess Insurance" means a coverage designed to be in excess over one or more primary coverages or a Self-Insured Retention and which does not pay a loss until the loss amount exceeds a certain sum.

(5) "Guide (a) Rates" means advisory (a) rates that have been developed by rate service organizations or company home office underwriters. They represent a rough average and are used as guides or signposts.

(6) "Guide (a) Manual" means a collection of Guide (a) Rates with rules and procedures for their use.

(7) "Increased Limits Factor" means a rating factor used to adjust a manual rate to limits higher than the basic manual limits.

(8) "Individual Risk Filing" means a filing of the insurance policy of an individual risk which is submitted to the commissioner. It shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, the underwriter's explanation for the filing, premium development, and the appropriate filing transmittal forms and filing fee.

(9) "Self-Insured Retention" means that portion of a risk or potential loss which is assumed by an insured. It may be in the form of a deductible, self-insurance, or no insurance. For the purpose of this rule, "self-insured retention" is limited to amounts of at least \$50,000 or more.

(10) "Umbrella Liability Insurance" means a coverage basically affording high limit coverage in excess of the limits of the primary policies as well as additional liability coverages. These additional coverages are usually subject to a substantial self-insured retention. The term "umbrella" is derived from the fact that it is a separate policy over and above any other basic liability policies the insured may have.

R590-127-5. Filing of Procedures.

Each insurer to which this rule applies shall maintain on file with the commissioner a general statement of company policies and procedures for underwriting and developing (a) rates and (a) rating. This statement shall include a delineation of the extent of home office and branch office authority with regards to the promulgation of (a) rates. This statement should include any formal guidelines established by the insurer for these situations. Any changes in general policy made subsequent to this initial filing will be subject to filing at the time of the change.

R590-127-6. (a) Rates.

(1) All (a) rates shall be exempt from the filing requirements of Section 31A-19a-203.

(2) Whenever an (a) rate is used the underwriting file shall contain full and supporting factual documentation verifying that it is an (a) rate as defined and showing the development of the (a) rate assigned by the underwriter:

(a) If the insurer has a Guide (a) Manual, the underwriter must start with the Guide (a) Rate suggested in the manual. If the underwriter feels adjustments to the suggested rate are appropriate, he shall document the steps in the development of the adjusted rate and show that he has followed the insurer's established procedure in the (a) rate development.

(b) If no Guide (a) Rate is available, the underwriter shall

document the steps in the development of the (a) rate. This development should contain an analysis of such things as the specific definable loss potential characteristics, a comparison to similar risks and their manual rates, available loss frequency and severity data, an analysis of current engineering reports, and any other pertinent underwriting criteria.

(c) As individual risk experience and characteristics are considered by the underwriter in developing the (a) rate, the only rate modification factors that may be applied to an (a) rate are Increased Limits Factors, package factors, premium size factors, expense modification factors and deductible factors. If automated rating procedures automatically apply other modification factors, this fact should be considered in the development of the initial rate.

(3) If an underwriter determines to use an Increased Limits Factor which is different from the Guide (a) Increased Limits Factors of the Commercial Lines Manual, the underwriting file shall contain full and supporting factual data justifying the change in the Guide (a) Increased Limits Factor.

(4) Whenever an insurer renews a risk which contains (a) rates the underwriting file shall contain documentation of the underwriter's reevaluation of the (a) rate assigned and justification for the continuation of the (a) rate or the development of any new (a) rate. If the (a) rate previously assigned is revised more than +/- 25%, the underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy. This filing shall contain the underwriter's documentation of the (a) rate development for the prior year and the development and explanation for the new (a) rate.

R590-127-7. (a) Rating, Special Risk Rating.

(1) Rates that are developed by an underwriter through an (a) rating process are exempt from the filing requirements of Section 31A-19a-203.

(2) An underwriter is permitted to use (a) rating only in the following circumstances:

(a) When it can be clearly demonstrated that a risk described by specific classifications in the Commercial Lines Manual presents unique or unusual conditions of exposure or hazard such that the application of the normal manual rate for that classification does not produce a reasonable and equitable rate for the risk. The underwriter should bear in mind that manual classifications are understood to be general in nature and, thus, may not exactly describe the risk being considered. For this reason (a) rating is not to be used simply because the risk does not exactly match the manual classification description, but must be substantially different.

(b) When the coverage to be written is broader or more restricted than that provided for by the manual definition of coverage as limited by applicable manual exclusions.

(c) When the insurer has developed a program for types of risks or coverages that are not included in the Commercial Lines Manual and for which there is limited statistical data for ratemaking purposes. or

(d) When a risk develops more than \$100,000 in annual manual basic limits unmodified premium for automobile liability, general liability, glass and theft insurance, individually, or \$250,000 in any combination. Boiler and machinery risks may be (a) rated provided the one-year deposit premium charged for the coverages afforded is \$50,000 or more.

(3) Whenever an underwriter uses (a) rating (special risk rating) the underwriting file shall contain a full explanation showing that the risk fits one of the circumstances described in Subsection (2). The file shall also contain full and supporting factual documentation showing the development of the rates assigned by the underwriter. This development should contain an analysis of such things as the specific definable loss potential characteristics, a comparison to similar risks and their manual

rates, available loss frequency and severity data, an analysis of current engineering reports, and any other pertinent underwriting criteria.

(4) Whenever an insurer renews a risk which has been (a) rated according to this section, the underwriting file shall contain documentation of the underwriter's reevaluation of the (a) rating and justification for the continuation of the (a) rating. Except for changes in premium basis, if the (a) rating produces a renewal premium which varies more than +/- 25% from the expiring policy premium, the underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy. This filing shall contain the underwriter's documentation of the rate development for the prior term and the renewal term and an explanation for the change in premium.

R590-127-8. Commercial Excess and Umbrella Liability Insurance.

(1) Rates and rating plans for commercial excess insurance and umbrella liability insurance are exempt from the filing requirements of Section 31A-19a-203.

(2) The underwriting files of all excess insurance and umbrella liability insurance risks must contain full and supporting factual documentation justifying the rate and showing the development of the rate. This development should contain an analysis of such things as the specific definable loss potential characteristics with regards to its excess exposure and any other pertinent underwriting criteria.

(3) Whenever an insurer renews a commercial excess or umbrella liability policy the underwriting file shall contain documentation of the underwriter's reevaluation of the rate assigned and justification for the continuation of the rate or the development of any new rate.

R590-127-9. Penalties.

Failure to comply with this rule and to maintain the documentation as outlined shall be deemed a violation of this rule. Pursuant to Section 31A-2-308, any person found to be in violation shall forfeit to the state not more than \$1,000 for each violation.

R590-127-10. Separability.

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.

KEY: insurance companies

December 14, 1999

Notice of Continuation August 20, 2014

31A-2-201

31A-19a-103

R590. Insurance, Administration.**R590-129. Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment.****R590-129-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which empowers the commissioner to enforce Title 31A and to make rules to implement its provisions, and Subsection 31A-23a-402(8), which empowers the commissioner to define and prohibit unfair marketing practices.

R590-129-2. Purpose.

The purpose of this rule is to identify and define certain practices which the commissioner finds are unfair and discriminatory.

R590-129-3. Scope.

This rule applies to all new or renewal insurance contracts offered for sale in Utah.

R590-129-4. Prohibited Acts and Practices.

The following acts and practices are prohibited:

1. refusing to insure or refusing to continue to insure;
2. limiting the amount, extent, or kind of coverage available to an individual; or
3. charging a higher rate for the same coverage solely because of blindness, partial blindness, or physical or mental impairment except where the refusal, limitation, or rate differential is based upon sound actuarial principles or reasonably anticipated loss experience.

Refusal to insure includes denial by an insurer of disability insurance coverage on the basis that the policy defines "disability" as being presumed in the event that the insured suffers the loss of sight. It is not a violation of this rule to exclude from coverage any disability consisting of blindness, partial blindness, physical or mental impairment when the condition existed at the time the policy was issued.

KEY: insurance companies**1989****Notice of Continuation August 20, 2014****31A-2-201****31A-23a-402**

R590. Insurance, Administration.**R590-167. Individual, Small Employer, and Group Health Benefit Plan Rule.****R590-167-1. Authority, Purpose and Scope.**

(1) Authority.

This rule is intended to implement the provisions of Chapter 30, Title 31A, the Individual and Small Employer Health Insurance Act, referred to in this rule as the Act. The commissioner's authority to enforce this rule is provided under Subsections 31A-2-201(3)(a), 31A-30-106(1)(k), and 31A-30-106.1(10).

(2) Purpose.

(a) The general purposes of the Act and this rule are:

(i) to enhance the availability of health insurance coverage to individuals and small employers;

(ii) to regulate and prevent abuse in insurer rating practices and establish limits on differences in rates between health benefit plans;

(iii) to ensure renewability of coverage;

(iv) to establish limitations on the use of preexisting condition exclusions;

(v) to prescribe the manner in which case characteristics may be used;

(vi) to regulate the use and establishment of separate classes of business;

(vii) to provide for portability; and

(viii) to improve the overall fairness and efficiency of the individual and small employer health insurance market.

(b) The Act and this rule are intended to:

(i) promote broader spreading of risk in the individual and small employer marketplace; and

(ii) regulate rating practices for all health benefit plans sold to individuals and small employers, whether sold directly or through associations or other groupings of individuals and small employers.

(3) Scope.

Carriers that provide health benefit plans to individuals and small employers are intended to be subject to all of the provisions of this rule.

R590-167-2. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule:

(1) "Associate member of an employee organization" means any individual who participates in an employee benefit plan, as defined in 29 U.S.C. Section 1002(1), that is a multi-employer plan, as defined in 29 U.S.C. Section 1002(37A), other than the following:

(a) an individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

(b) an individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan, or of a related plan.

(2) "Change in a Rating Factor" means the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

(3) "Change in Rating Method" means:

(a) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit

plans in a class of business;

(b) a change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) a change in the method of allocating expenses among health benefit plans in a class of business; or

(d) a change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.

(4) "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

(5) "Risk characteristic" means a rating factor other than a case characteristic allowed under Sections 31A-30-106 or 31A-30-106.1, as applicable, including exact age, gender, family composition, the health status, claims experience, duration of coverage, or any similar characteristic related to the demographics or the health status or experience of an individual, a small employer or of any member of a small employer.

(6) "Risk load" means the percentage above the applicable base premium rate that is charged by a covered carrier to a covered insured to reflect the risk characteristics of the covered individuals.

R590-167-3. Applicability and Scope.

(1) This rule shall apply to any health benefit plan which:

(a) meets one or more of the conditions set forth in Subsections 31A-30-104(1) and (2);

(b) provides coverage to a covered insured located in this state, without regard to whether the policy or certificate was issued in this state; and

(c) is in effect on or after the effective date of this rule.

(2)(a) If a small employer has employees in more than one state, the provisions of the Act and this rule shall apply to a health benefit plan issued to the small employer if:

(i) the majority of eligible employees of such small employer are employed in this state; or

(ii) if no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(b) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in Subsection R590-167-3(2)(a), the provisions of the subsection shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(c) If a health benefit plan is subject to the Act and this rule, the provisions of the Act and this rule shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

(3) A carrier that is not operating as a covered carrier in this state may not become subject to the provisions of the Act and this rule solely because an individual or a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

R590-167-4. Establishment of Classes of Business.

(1) A covered carrier that establishes more than one class of business pursuant to the provisions of Section 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

(a) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

(b) a statement describing the justification for establishing

the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in Section 31A-30-105; and

(c) a statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

(2) For policies issued or renewed on or after January 1, 2011, a covered carrier may not establish a separate class of business without a prior approval of the commissioner.

(3) In order to receive an approval to establish a separate class of business under Subsection R590-167-4(2) the covered carrier shall submit a filing in compliance with R590-220 that includes:

(a) a written request to establish a separate class of business;

(b) description of all criteria employed by the carrier, or any of its agents, for determining membership in the class of business;

(c) disclosure of which health benefit plans will be available for purchase in the class and any significant limitations related to the purchase of such plans; and

(d) demonstrate to the satisfaction of the commissioner that the use of a separate class of business is necessary due to substantial differences in either expected claims experience or administrative costs related to the following reasons:

(i) the covered carrier uses more than one type of system for the marketing and sale of health benefit plans to covered insureds;

(ii) the covered carrier has acquired a class of business from another covered carrier;

(iii) the covered carrier provides coverage to one or more association groups;

(e) a list of previously approved classes of business; and

(f) for each class of business used prior to January 1, 2011, a certification that the continued use of the class of business is necessary due to conditions specified in Subsection R590-167-4(3)(d).

(4) A carrier may not directly or indirectly use group size as a criterion for establishing eligibility for a class of business.

R590-167-5. Transition for Assumptions of Business from Another Carrier.

(1)(a) A covered carrier may not transfer or assume the entire insurance obligation, risk, or both of a health benefit plan covering an individual or a small employer in this state unless:

(i) the transaction has been approved by the commissioner of the state of domicile of the assuming carrier;

(ii) the transaction has been approved by the commissioner of the state of domicile of the ceding carrier;

(iii) the carrier has provided notice to the commissioner of this state at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in Subsection R590-167-5(1)(c)(i) for the health benefit plans covering individuals and small employers in this state; and

(iv) the transaction otherwise meets the requirements of this section.

(b) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation, risk, or both of one or more health benefit plans covering covered individuals from or to another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction, if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this rule. The commissioner may not approve the transaction until at least 30 days after the date of the

filing; except that, if the carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

(c)(i) The filing required under Subsection R590-167-5(1)(b) shall:

(A) describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

(B) describe whether the assuming carrier intends to maintain the assumed health benefit plans as a separate class of business, pursuant to Subsection R590-167-5(3), or will incorporate them into an existing class of business, pursuant to Subsection R590-167-5(4). If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(C) describe whether the health benefit plans being assumed are currently available for purchase by individuals or small employers;

(D) describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(E) describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(F) describe any other potential material effects of the assumption on the coverage provided to the individuals and small employers covered by the health benefit plans to be assumed; and

(G) include any other information required by the commissioner.

(ii) A covered carrier required to make a filing under Subsection R590-167-5(1)(b) shall also make an informational filing with the commissioner of each state in which there are individual or small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under Subsection R590-167-5(1)(b) and shall include at least the information specified in Subsection R590-167-5(1)(c)(i) for the individual or small employer health benefit plans in that state.

(d)(i) If the assumption of a class of business would result in the assuming covered carrier being out of compliance with the limitations related to premium rates contained in Sections 31A-30-106 or 31A-30-106.1, the assuming carrier shall make a filing with the commissioner pursuant to Subsection 31A-30-105(3) seeking an extended transition period.

(ii) An assuming carrier seeking an extended transition period may not complete the assumption of health benefit plans covering individuals or small employers in this state unless the commissioner grants the extended transition period requested pursuant to Subsection R590-167-5(1)(d)(i).

(iii) Unless a different period is approved by the commissioner, an extended transition period shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(2)(a) Except as provided in Subsection R590-167-5(2)(b), a covered carrier may not cede or assume the entire insurance obligation, risk, or both for an individual or small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

(b) A covered carrier may cede less than an entire class of business to an assuming carrier if:

(i) one or more individuals or small employers in the class

have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which an individual or a small employer has rejected the proposed cession; or

(ii) after a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the individual or small employers insured in that class of business.

(3) A covered carrier that assumes one or more health benefit plans from another carrier and intends to maintain such health benefit plans as a separate class of business, shall submit a filing requesting approval to establish a separate class of business as provided in Subsection R590-167-4(3). The assumption shall not take place prior to approval of the request by the commissioner.

(4) A covered carrier that assumes one or more health benefit plans from another carrier and intends to incorporate them into an existing class of business shall comply with the following provisions:

(a) Upon assumption of the health benefit plans, such health benefit plans shall be maintained temporarily as a separate class of business, deemed to be approved by the commissioner under Subsection 31A-30-105(2)(b)(ii). A covered carrier may exceed the limitation contained in Subsection 31A-30-105(4) due solely to such assumption.

(b) During the 15-month period following the assumption, each of the assumed individual or small employer health benefit plans shall be transferred by the assuming covered carrier into a single class of business operated by the assuming covered carrier. The assuming covered carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

(c) The transfers authorized in Subsection R590-167-5(4)(b) shall occur with respect to each individual or small employer on the anniversary date of the individual's or small employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(d) A covered carrier making a transfer pursuant to Subsection R590-167-5(4)(b) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

(e) The premium rate for an assumed individual or small employer health benefit plan may not be modified by the assuming covered carrier until the health benefit plan is transferred pursuant to Subsection R590-167-5(4)(b). Upon transfer, the assuming covered carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

(f) During the 15 month period provided in this subsection, the transfer of individual or small employer health benefit plans from the assumed class of business in accordance with this subsection may not be considered a violation of Subsections 31A-30-106(3)(a) or 31A-30-106.1(8)(a), as applicable.

(5) An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan, or

with respect to any health benefit plan subsequently offered to an individual or small employer covered by such an assumed health benefit plan, that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

(6) The commissioner may approve a longer period of transition under Subsection R590-167-5(4) upon application of a covered carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

(7) Nothing in this section or in the Act is intended to:

(a) reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in Section 31A-14-213, of the ceding or assuming carrier related to the transaction;

(b) authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

(c) reduce or diminish the protections related to an assumption reinsurance transaction provided in Section 31A-14-213 or otherwise provided by law.

R590-167-6. Restrictions Relating to Premium Rates.

(1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method, as defined in Section R590-167-2, used in the rate manual for a class of business until the change has been approved as provided in this subsection. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall clearly request approval for a change in rating method and contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate;

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of Sections 31A-30-106, 31A-30-106.1, and 31A-30-106.5; and

(vi) a request for approval for a change in rating method must be submitted as a separate filing. The filing description must state in the first line of the first paragraph, "REQUEST FOR APPROVAL FOR CHANGE IN RATING METHOD."

(3) The rate manual developed pursuant to Subsections 31A-30-106(4), 31A-30-106.1(13), and R590-167-6(1) shall

specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

(a) A covered carrier offering a health benefit plan to an individual may not use case characteristics other than those specified in Subsection 31A-30-106(1)(f) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection R590-167-6(2)(b). Tobacco use is not an allowable case characteristic. Tobacco use is an allowable risk characteristic when utilized in compliance with Subsection 31A-30-106(1)(b).

(b)(i) A covered carrier offering or renewing a health benefit plan to a small employer, may not use case characteristics other than:

(A) age band, as specified in Subsection 31A-30-106.1(6)(a), applicable to the age of the employee;

(B) geographic area;

(C) family composition tier, as specified in Subsection 31A-30-106.1(6)(c);

(D) gender, as specified in Subsection 31A-30-106.1(6)(d);

(E) Medicare coordination, as specified in Subsection 31A-30-106.1(6)(e); and

(F) wellness programs, as specified in Subsection 31A-30-106.1(6)(f).

(ii) For any geographic area used as a case characteristic by a covered carrier, base rates for any small employer health benefit plan shall be subject to the following limitations:

(A) for any age band, the ratio of the base rate for the family tier to the base rate for employee only tier, shall not exceed the ratio in Subsection 31A-30-106.1(8); and

(B) for any family composition tier, the ratio of the base rate for any age band to the base rate for "less than 20" age band, may not exceed the following:

(I) 1.22 for age band 20 to 24;

(II) 1.34 for age band 25 to 29;

(III) 1.46 for age band 30 to 34;

(IV) 1.60 for age band 35 to 39;

(V) 1.80 for age band 40 to 44;

(VI) 2.20 for age band 45 to 49;

(VII) 2.80 for age band 50 to 54;

(VIII) 3.60 for age band 55 to 59;

(IX) 4.25 for age band 60 to 64; and

(X) 5.00 for age band over 65.

(c) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

(d) The rate manual shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(e) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of an individual or small employer that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employers vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employers that choose or are expected to choose a particular health benefit plan.

(f) The rate manual shall provide for premium rates to be developed in a two-step process.

(i) In the first step, a base premium rate shall be developed for the individual or small employer without regard to any risk characteristics. The base rates shall reflect only the allowable case characteristics. The base rates for an individual health benefit plan offered to two individuals with the same case characteristics shall be identical. The base rates for a small employer health benefit plan offered to two small employer groups with the same case characteristics shall be identical.

(ii) In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of Sections 31A-30-106, 31A-30-106.1, and 31A-30-106.5, to reflect the risk characteristics.

(g) Each rate manual developed pursuant to Subsection R590-167-6(1) shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.

(4)(a) Except as provided in Subsection R590-167-6(4)(b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect to an individual or small employer health benefit plan, but only one fee with respect to such plan, provided the fee is no more than \$5 per month per individual or employee and is applied in a uniform manner to each health benefit plan in a class of business.

(5) The restrictions related to changes in premium rates in Subsections 31A-30-106(1)(c) and 31A-30-106.1(3) shall be applied as follows:

(a) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(b)(i) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106.1(3).

(ii) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106.1(3).

(iii) Trend increases are limited to a 12-month period. If an insurer chooses to use trend in the rate manual, a new filing must be submitted for each 12-month period. The detailing of the rate calculation must specify how trend is being implemented, by plan or calendar year, and how the rates are determined.

(c) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

(d) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(6)(a) Except as provided in Subsection R590-167-6(6)(b), a change in premium rate for an individual or small employer

shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

(ii) one plus the sum of:

(iii) the risk load applicable to the individual or small employer during the previous rating period; and

(iv) 15% prorated for periods of less than one year.

(b) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, given its present composition and as shown in the rate manual in effect for the individual or small employer at the beginning of the previous rating period, multiplied by:

(ii) one plus the lesser of:

(A) the change in the base rate; or

(B) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

(iii) one plus the sum of:

(A) the risk load applicable to the individual or small employer during the previous rating period; and

(B) 15%, prorated for periods of less than one year.

(c) Notwithstanding the provisions of Subsections R590-167-6(6)(a) and (b), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in Subsections 31A-30-106(1)(b) and 31A-30-106.1(2)(b).

(7)(a) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of Subsections 31A-30-106.1(1) through 31A-30-106.1(6) with respect to such trust.

(b) A request made under Subsection R590-167-6(7)(a) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(i) adversely affect the participants and beneficiaries of the trust; and

(ii) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

(c) A waiver granted under Subsection 31A-30-104(5) shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

R590-167-7. Application to Reenter State.

(1) A carrier that has been prohibited from writing coverage for individuals or small employers in this state pursuant to Subsection 31A-30-107.3 may not resume offering health benefit plans to individuals or small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a covered carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

(2) In the case of a covered carrier doing business in only one established geographic service area of the state, if the covered carrier elects to nonrenew a health benefit plan under Subsections 31A-30-107(3)(e) or 107.1(3)(e), the covered carrier shall be prohibited from offering health benefit plans to individuals or small employers in any part of the service area for a period of five years. In addition, the covered carrier may not

offer health benefit plans to individuals or small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

R590-167-8. Qualifying Previous Coverage.

A covered carrier shall not deny, exclude, or limit benefits because of a preexisting condition without first ascertaining the existence and source of previous coverage. The covered carrier shall have the responsibility to contact the source of such previous coverage to resolve any questions about the benefits or limitations related to such previous coverage. Previous coverage may be coverage that continues after the issuance of the new health benefit plan. The previous carrier shall fully cooperate in furnishing the needed information required by this section.

R590-167-9. Restrictive Riders.

A restrictive rider, endorsement or other provision that violates the provisions of Section 31A-30-107.5 may not remain in force. A covered carrier shall immediately provide written notice to those individuals or small employers whose coverage will be changed pursuant to this section.

R590-167-10. Status of Carriers as Covered Carriers.

(1) Prior to marketing a health benefit plan, a carrier shall make a filing with the commissioner indicating whether the carrier intends to operate as a covered carrier in this state under the terms of the Act and of this rule. Such filing will indicate if the covered carrier intends to market to individuals, small employers or both, and be signed by an officer of the company.

(2) Except as provided by Subsection R590-167-10(3), a carrier may not offer health benefit plans to individuals, small employers, or continue to provide coverage under health benefit plans previously issued to individuals or small employers in this state, unless the filing provided pursuant to Subsection R590-167-10(1) indicates that the carrier intends to operate as a covered carrier in this state.

(3) If a carrier does not intend to operate as a covered carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state only if the carrier complies with the following provisions:

(a) the carrier complies with the requirements of the Act with respect to each of the health benefit plans previously issued to individuals and small employers by the carrier;

(b) the carrier provides coverage to each new entrant to a health benefit plan previously issued to an individual or small employer by the carrier;

(c) the carrier complies with the requirements of Sections 31A-30-106 and 31A-30-106.1 and this rule as they apply to individuals and small employers whose coverage has been terminated by the carrier and to individuals and small employers whose coverage has been limited or restricted by the carrier; and

(d) the carrier files a letter of intent indicating the carrier does not intend to operate as a covered carrier in this state and will maintain the business in compliance with the Act and this rule.

(4) If the filing made pursuant Subsection R590-167-10(3) indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier shall be precluded from operating as a covered carrier in this state, except as provided for in Subsection R590-167-10(3), for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a covered carrier would be in the best interests of the individuals and small employers in the state.

R590-167-11. Actuarial Certification and Additional Filing Requirements.

(1) Actuarial Certification.

(a) An actuarial certification shall be filed annually and meet the requirements of Subsections 31A-30-106(4)(b) or 31A-30-106.1(9)(b), or both, as applicable, and the following:

(i) the actuarial certification shall be a written statement that meets the requirements of Title 31A Chapter 30, R590-167, and the applicable standards of practice as promulgated by the Actuarial Standards Board;

(ii) the actuary must state that he or she meets the qualifications of Subsection 31A-30-103(1);

(iii) the actuarial certification shall:

(A) contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Title 31A Chapter 30, and R590-167, based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans;"

(B) list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167; and

(C) include a list of all affiliated insurers, define each class of business which includes the commissioner's approval date if more than one class of business exists, and the SERFF filing number for each applicable rate manual filing.

(b) The actuarial certification shall be filed no later than April 1 of each year.

(2) Rating Manual.

(a) For every health benefit plan subject to the Act and this rule, the carrier shall file with the commissioner a copy of the applicable rating manual, for both new business and renewal rates, which includes:

(i) signed certification by an actuary that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the State of Utah;

(ii) a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iii) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iv) a description of the carrier's classes of business as described in Subsection R590-167-4(1);

(v) all information required by 45 CFR 154.215(b)(1);

(vi) for a rate increase subject to review as required by 45 CFR 154.200(a)(1), all information required by 45 CFR 154.215(b)(2); and

(vii) all information required by the Utah Accident and Health Comprehensive Health Insurance Rate Filing Checklist.

(b) The rate manual shall be filed:

(i) with an initial product filing; or

(ii) within 30 days prior to use for an existing health benefit plan.

(3) Index Premium Rates.

(a) A small employer carrier shall file annually the index premium rate information required by Subsection 31A-29-117(2). The report shall include:

(i) the small employer index premium rate as of January 1 of the previous year;

(ii) the small employer index premium rate as of January 1 of the current year; and

(iii) the average percentage change in the index premium rate as of January 1 of the current and preceding year.

(b) The information described in Subsection R590-167-11(3)(a) shall be filed no later than February 1 of each year.

R590-167-12. Records.

(1) Except as provided in Subsection R590-167-12(2), records submitted to the commissioner under this rule shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

(2) The commissioner finds the following to be considered a public record as defined in Subsection 63G-2-103:

(a) the status of a filing described herein and submitted to the department; and

(b) all information submitted as required by Subsections R590-167-11(2)(v) and (vi), and R590-220-10(2)(b)(iii)(I).

R590-167-13. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-167-14. Severability.

If any provision of this rule or the application of it to any person or circumstance is, for any reason, held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances will not be affected by the invalid provision.

KEY: health insurance**October 16, 2012****Notice of Continuation August 20, 2014****31A-30-106****31A-30-106.1**

R590. Insurance, Administration.**R590-194. Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism.****R590-194-1. 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. The authority to set minimum standards by rule for coverage of dietary products for inborn errors of amino acid or urea cycle metabolism is provided by Subsection 31A-22-623(2).

R590-194-2. Purpose.

The purpose of this rule is to establish minimum standards of coverage for dietary products, including formulas and low protein modified food products, used for the treatment of inborn errors of amino acid or urea cycle metabolism. This coverage will be provided at levels consistent with the major medical benefit provided under a disability insurance policy. This entails the identification of a uniform billing code standard to be used by health insurers for the processing of claims covering dietary formulas in conjunction with the treatment of these specific inborn metabolic errors.

R590-194-3. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and Subsection 31A-22-623(1).

R590-194-4. Applicability and Scope.

(1) This rule applies to all disability insurance policies sold in Utah which contain major medical benefits.

(2) This rule does not prohibit an insurer from requesting additional information required to determine eligibility of the claim under the terms of the policy, certificate or both, as issued to the claimant.

R590-194-5. Minimum Standards and General Provisions.

(1) Dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism must be used under the direction of a physician.

(2) Preauthorization for dietary products may be required if the preauthorization requirement is stated in the policy.

(3) Each insurer will provide direct access to a designated person familiar with the pertinent information in this rule, in order to facilitate the processing of claims for medical foods and low protein modified food products.

(4) For the purpose of this rule, dietary products will be paid under the major medical benefit, not under any limited benefit, such as Durable Medical Equipment (DME). The dietary product benefit is subject only to the major medical benefit limit.

(5) The uniform billing code Standard Number 27-4010, "Coverage for Metabolic Dietary Products," published by the Utah Health Information Network, implemented February 12, 1999, is incorporated in this rule by reference. This uniform billing standard is adopted under 31A-22-614.5, and shall be accepted and utilized for the billing and processing of claims for medical food and low protein modified food products coverage. This standard is available at the Utah Insurance Department upon request.

R590-194-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity 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**December 1, 1999****Notice of Continuation August 20, 2014****31A-2-201****31A-22-614.5****31A-22-623**

R590. Insurance, Administration.**R590-229. Annuity Disclosure.****R590-229-1. Authority.**

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for buyer's guides and disclosures and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-229-2. Purpose.

The purpose of this rule is to:

(1) provide standards for the disclosure of minimum information about annuity contracts to protect consumers by specifying:

(a) the minimum information that must be disclosed; and
(b) the method for disclosing it in connection with the sale of annuity contracts; and

(2) foster consumer education by ensuring that purchasers of annuity contracts understand certain basic features of annuity contracts.

R590-229-3. Scope.

(1) This rule applies to individual and group annuity contracts and certificates except:

(a) registered or non-registered variable annuities or other registered products;

(b)(i) annuities used to fund:

(A) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);

(B) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), or 403(b) where the plan is established or maintained by an employer;

(C) a government or church plan defined in IRC Section 414 or a deferred compensation plan or a state or local government or a tax exempt organization under IRC Section 457; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (1)(b)(i) of this section, this rule shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement; and

(c) structured settlement annuities; and

(d) funding agreements.

(2) The disclosure document requirements of this rule do not apply to immediate and deferred annuities that contain no nonguaranteed elements.

R590-229-4. Incorporation by Reference.

The following Buyer's Guides are hereby incorporated by reference within this rule:

(1) "Buyer's Guide for Deferred Annuities" dated 2013, as adopted by and available from the National Association of Insurance Commissioners;

(2) "Buyer's Guide for Deferred Annuities - Fixed" dated 2013, as adopted by and available from the National Association of Insurance Commissioners; and

(3) "Buyer's Guide for Deferred Annuities - Variable" dated 2013 as adopted by and available from the National Association of Insurance Commissioners.

R590-229-5. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Buyer's Guide" means a document which contains, and is limited to, the language contained in the "Buyer's Guide for Deferred Annuities," dated 2013, the Buyer's Guide for Deferred Annuities - Fixed" dated 2013, and the "Buyer's Guide for Deferred Annuities - Variable" dated 2013.

(2) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(3) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if all of the underlying elements that go into its calculation are either guaranteed or determinable.

(4) "Disclosure document" means the document described in Subsection 6(2) of this rule.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for such as "single premium deferred annuity".

(7) "Guaranteed elements" means premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Non-guaranteed elements" means the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying elements that go into its calculation are non-guaranteed.

(9) "Structured settlement annuity" means a "qualified funding asset" as defined in IRC Section 130(d) or an annuity that would be a qualified funding asset under IRC Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

R590-229-6. Appropriate Buyer's Guide.

(1) The "Buyer's Guide for Deferred Annuities" shall be considered the appropriate Buyer's Guide for an annuity product.

(2) Notwithstanding Subsection (1) for a non-variable annuity product, the "Buyer's Guide to Deferred Annuities - Fixed" may be used as the appropriate Buyer's Guide.

(3) If an insurer elects to provide a Buyer's Guide for a variable annuity product, the insurer may use either the "Buyer's Guide for Deferred Annuities" or the "Buyer's Guide for Deferred Annuities - Variable."

R590-229-7. Standards for the Disclosure Document and Buyer's Guide.

(1)(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall, at or before the time of application, be given both the disclosure document described in Subsection 7(2) of this section and the appropriate Buyer's Guide, as described in Section 6.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the appropriate

Buyer's Guide no later than five business days after the completed application is received by the insurer.

(i) With respect to an application received as a result of a direct solicitation through the mail:

(A) providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days after receipt of the application; and

(B) providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(ii) With respect to an application received via the Internet:

(A) taking reasonable steps to make the appropriate Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days of receipt of the application; and

(B) taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the prospective applicant can obtain from the insurer a free annuity Buyer's Guide upon request.

(2) At a minimum, the following information shall be included in the disclosure document required to be provided under this rule:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate of:

(i) the guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(iii) periodic income options, both on a guaranteed and non-guaranteed basis;

(iv) any value reductions caused by withdrawals from or surrender of the contract;

(v) how values in the contract can be accessed;

(vi) the death benefit, if available, and how it will be calculated;

(vii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(viii) impact of any rider, such as a long-term care rider;

(d) specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) information about the current guaranteed rate for a new contract that contains a clear notice that the rate is subject to change.

(3) An insurer shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

R590-229-8. Report to Contract Owners.

For an annuity in the payout period with changes in non-

guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide the contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) the beginning and end date of the current report period;

(2) the accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) the total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and

(4) the amount of outstanding loans, if any, as of the end of the current report period.

R590-229-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 65 days after the effective date.

R590-229-10. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such 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: insurance, annuity disclosure

May 27, 2014

Notice of Continuation August 20, 2014

31A-2-201

31A-22-425

R597. Judicial Performance Evaluation Commission, Administration.**R597-3. Judicial Performance Evaluations.****R597-3-1. Evaluation Cycles.**

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first six months of the retention cycle.

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission may provide a partial midterm evaluation to any judge whose appointment date precludes the collection of complete midterm evaluation data.

(c) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(d) The commission may select retention survey questions from among the midterm survey questions.

(e) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(f) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three

total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

(F) bailiffs;

(G) law clerks;

(H) central staff attorneys;

(I) juvenile probation and intake officers;

(J) other courthouse staff, as appropriate;

(K) Administrative Office of the Courts staff.

(d) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) convicted felons;

(vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall commit to one one-year term of service.

(iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the

commission.

(iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(vi) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

- (i) Neutrality, including but not limited to:
 - (A) displaying fairness and impartiality toward all court participants;
 - (B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;
 - (C) explaining transparently and openly how rules are applied and how decisions are reached.
 - (D) listening carefully and impartially;
 - (ii) Respect, including but not limited to:
 - (A) demonstrating courtesy toward attorneys, court staff, and others in the court;
 - (B) treating all people with dignity;
 - (C) helping interested parties understand decisions and what the parties must do as a result;
 - (D) maintaining decorum in the courtroom.
 - (E) demonstrating adequate preparation to hear scheduled cases;
 - (F) acting in the interests of the parties, not out of demonstrated personal prejudices;
 - (G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;
 - (H) demonstrating interest in the needs, problems, and concerns of court participants.
 - (iii) Voice, including but not limited to:
 - (A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;
 - (B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.
 - (C) attending, where appropriate, to the participants' comprehension of the proceedings.
- (c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

- (1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:
 - (a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.
 - (b) Meet all performance standards established by the Judicial Council, including but not limited to:
 - (i) annual judicial education hourly requirement;
 - (ii) case-under-advisement standard; and
 - (iii) physical and mental competence to hold office.
- (2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

R597-3-5. Public Comments.

- (1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.
- (2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than November 1st of the year preceding the election in which the judge's name appears on the ballot.
- (3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.
- (4) All comments must be based upon first-hand

experience with the judge.

R597-3-6. Judicial Retirements and Resignations.

- (1) For purposes of judicial performance evaluation, the commission shall evaluate each judge until the judge:
 - (a) provides written notice of resignation or retirement to the Governor;
 - (b) is removed from office;
 - (c) otherwise vacates the judicial office; or
 - (d) fails to properly file for retention.
- (2) For judges who provide written notice of resignation or retirement after a retention evaluation has been conducted but before it is distributed, the retention evaluation shall be sent to the Judicial Council.

R597-3-7. Publication of Retention Reports.

No later than three months after the filing deadline for a retention election, the commission shall post on its website the retention reports of all judges who have filed for that election.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys
August 8, 2014
Notice of Continuation February 17, 2014

78A-12

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-105. Blaster Training, Examination and Certification.****R645-105-100. Introduction.**

The rules in R645-105-100 present the requirements for blaster training, examination and certification at coal mining and reclamation operations. The Division is empowered to delegate, through contract or other means, the blaster training, examination, and certification program or any part thereof. The object of such delegation will be to minimize duplication of efforts of Utah agencies in certifying, licensing, or training mining personnel.

R645-105-200. Training.

210. To receive certification, a blaster will receive training from a program approved by the Division. Training may be provided by a permittee, industry, and/or the Division.

220. Training includes, but is not limited to, the technical aspects of blasting operations, and Utah and federal laws governing the storage, transportation, and use of explosives. Blasting courses will provide training and discuss practical applications of explosives.

230. Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives will receive direction and on-the-job training from a blaster.

240. Training will include course work in, and discuss the practical application of:

241. Explosives, including:

241.100. Selection of the type of explosive to be used;

241.200. Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

241.300. Handling, transportation, and storage;

242. Blast designs, including:

242.100. Geologic and topographic considerations;

242.200. Design of a blast hole, with critical dimensions;

242.300. Pattern design, field layout, and timing of blast holes; and

242.400. Field applications;

243. Loading blast holes, including priming and boosting;

244. Initiation systems and blasting machines;

245. Blasting vibrations, airblasts and flyrock, including:

245.100. Monitoring techniques; and

245.200. Methods to control adverse effects;

246. Secondary blasting applications;

247. Current federal and Utah rules applicable to the use of explosives;

248. Blast records; and

249. Schedules.

250. Training will also include course work in, and discuss the practical application of:

251. Preblasting surveys, including:

251.100. Availability;

251.200. Coverage; and

251.300. Use of in-blast design;

252. Blast-plan requirements;

253. Certification and training;

254. Signs, warning signals, and site control; and

255. Unpredictable hazards, including:

255.100. Lightning;

255.200. Stray currents;

255.300. Radio waves; and

255.400. Misfires.

R645-105-300. Examination.

310. Candidates for blaster certification will meet the following qualifications:

311. Have one year practical field experience involving blasting prior to taking the examination;

312. Take an approved blaster training course as required by R645-105-210;

313. Pass the written examination; and

314. Be twenty-one years of age or older.

320. Examination will be administered by the Division or its designee and will include, at a minimum, the topics set forth in R645-105-240 and R645-105-250.

R645-105-400. Certification.

410. Upon successful completion of the training and examination process identified in R645-105-200 and R645-105-300, the candidate for blasting certification will be awarded a certificate for three years from the date of issuance.

420. Blasting certificates may be renewed by attending a refresher course approved by the Division.

430. Refresher courses will review the topics identified in initial training in R645-105-200.

440. Suspension and revocation of certification.

441. The Division, when practicable, following written notice and opportunity for hearing and upon a Board finding of willful misconduct, will suspend or revoke the blaster's certification during the term of the certification or take other necessary action for any of the following reasons:

441.100. Noncompliance with any blasting-related order issued by the Board;

441.200. Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

441.300. Violation of any provision of Utah or federal explosives laws or regulations; or

441.400. Providing false information or a misrepresentation to obtain certification.

442. If advance notice and opportunity for a hearing cannot be provided, an opportunity for a hearing will be provided as soon as practical following the suspension, revocation, or other adverse action.

443. Upon notice of suspension or revocation of a blaster certificate, the blaster shall immediately surrender the revoked or suspended certificate to the Division.

450. Protection and Conditions of Certification.

451. Protection of Certification. Certified blasters will take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence will be reported immediately to the Division.

452. Conditions of Certification. In addition to the recertification described in R645-105-420, the following conditions for maintaining certification apply to all blasters:

452.100. A blaster will immediately exhibit, upon request, his or her certificate to any authorized representative of the Division and the Office;

452.200. Blasters' certificates will not be assigned or transferred; and

452.300. Blasters will not delegate their responsibility to any individual who is not a certified blaster.

KEY: reclamation, coal mines

November 17, 2000

Notice of Continuation August 5, 2014

40-10-1, et seq.

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-106. Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.****R645-106-100. Scope.**

This rule implements the exemption contained in Section 40-10-3(20) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

R645-106-200. Application Requirements and Procedures.

210. Date and Time Requirements.

211. Any person who plans to commence or continue coal extraction after July 1, 1992, under the Utah coal regulatory program, in reliance on the incidental mining exemption shall file a complete application for exemption with the Division for each mining area.

212. Following incorporation of an exemption application approval process into the Utah coal regulatory program, a person may not commence coal extraction based upon the exemption until the Division approves such application, except as provided in R645-106-253.

220. Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to July 1, 1992, may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the Division. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the Division makes an administrative decision on such application.

230. Additional information. The Division shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

240. Public comment period. Following publication of the newspaper notice required by R645-106-319., the Division shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

250. Exemption determination.

251. No later than 90 days after filing of an administratively complete application, the Division shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under R645-106, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

252. The determination of exemption shall be based upon information contained in the application and any other information available to the Division at that time.

253. If the Division fails to provide an applicant with the determination as specified in R645-106-251, an applicant who has not begun may commence coal extraction pending a determination on the application unless the Division issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

260. Administrative review.

261. Any adversely affected person may request administrative review of a determination under R645-106-250 within 30 days of the notification of such determination in accordance with procedures established under the R641 rules and R645-300-200.

262. A petition for administrative review filed under R645-300-200 shall not suspend the effect of a determination under R645-106-250.

R645-106-300. Contents of Application for Exemption.

310. An application for exemption shall include at a minimum:

311. The name and address of the applicant;

312. A list of the minerals sought to be extracted;

313. Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

314. Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

315. Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

316. The basis for all annual production, revenue, and fair market value estimates;

317. A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

318. An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

319. Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the Division (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.);

320. Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

321. A map of appropriate scale which clearly identifies the mining area;

322. A general description of mining and mineral processing activities for the mining area;

323. A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

324. If the other minerals are to be commercially used by the applicant, a description specifying the use;

325. For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

325.100. Any relevant documents the operator has received from the Division documenting its exemption from the requirements of the Act;

325.200. The cumulative production of the coal and other minerals from the mining area; and

325.300. Estimated tonnages of stockpiled coal and other minerals; and

326. Any other information pertinent to the qualification of the operation as exempt.

R645-106-400. Public Availability of Information.

410. Except as provided in R645-106-420., all information submitted to the Division under R645-106- shall be made immediately available for public inspection and copying at the Salt Lake City office of the Division until at least three years after expiration of the period during which the subject mining area is active.

420. The Division may keep information submitted to the Division under R645-106- confidential, if the person submitting

it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under R645-106.

430. Information requested to be held as confidential under R645-106-420 shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

R645-106-500. Requirements for Exemption.

510. Activities are exempt from the requirements of the Act if all of the following are satisfied:

511. The cumulative production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16-2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

512. Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

513. The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

520. Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:

521. Each other mineral upon which an exemption under R645-106- is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

522. If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

R645-106-600. Conditions of Exemption and Right of Inspection and Entry.

610. A person conducting activities covered by this R645-106 shall:

611. Maintain on-site or at other locations available to authorized representatives of the Division and the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the Division;

612. Notify the Division upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

613. Conduct operations in accordance with the approved application or when authorized to extract coal under R645-106-220 or R645-106-253 prior to submittal or approval of an exemption application, in accordance with the standards of R645-106.

614. Authorized representatives of the Division and the Secretary shall have the right to conduct inspections of operations claiming exemption under this R645-106.

615. Each authorized representative of the Division and

the Secretary conducting an inspection under this R645-106:

615.100. Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

615.200. May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

615.300. Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.

616. No search warrant shall be required with respect to any activity under R645-106-614 and R645-106-615, except that a search warrant may be required for entry into a building.

R645-106-700. Stockpiling of Minerals.

710. Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

711. Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

712. For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

720. Other minerals.

721. The Division shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of R645-106- if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

722. The Division may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this R645-106 if:

722.100. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

722.200. Except as provided in paragraph R645-106-723, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the Division on the basis of the exemption application.

723. The Division may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in R645-106-722 if the operator can demonstrate to the Division's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

724. The Division may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by R645-106-722 and -723 based on additional information available to the Division.

R645-106-800. Revocation and Enforcement.

810. Division responsibility. The Division shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to R645-106-900, an on-site inspection and any other information available to the Division.

820. If the Division has reason to believe that a specific mining area was not exempt under the provisions of R645-106 at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Division shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the Division within 30 days that the mining area in question

should continue to be exempt.

830. Division decision.

831. If the Division finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the Division shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the Division shall immediately notify the operator and intervenors.

832. Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under R645-300-200.

833. A petition for administrative review filed under R645-300-200 shall not suspend the effect of a decision whether to revoke an exemption.

840. Direct enforcement.

841. An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.

842. An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.

843. Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the applicable regulatory program with regard to conditions, areas and activities existing at the time of revocation or denial.

R645-106-900. Reporting Requirements.

910. Reports.

911. Following approval by the Division of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the Division containing the information specified in R645-106-920.

912. The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in R645-100-200.

913. The information in the report shall cover:

913.100. Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and

913.200. The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

920. For each period and mining area covered by the report, the report shall specify:

921. The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

922. The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

923. The number of tons of coal stockpiled;

924. The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

925. The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

926. The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

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40-10-1 et seq.

KEY: coal mining, reclamation

**R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-400. Inspection and Enforcement: Division Authority
and Procedures.**

**R645-400-100. General Information on Authority and
Procedures.**

110. Right of Entry.

111. Within the State of Utah, Division representatives may enter upon and through any coal exploration or coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant will be required, except that the State may provide for its use with respect to entry into a building.

112. Division representatives may inspect any monitoring equipment or method of exploration or operation and have access to and may copy any records required under the approved State Program. Division representatives may exercise these rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant will be required, except that the State may provide for its use with respect to entry into a building.

120. Enforcement Authority. Nothing in the Federal Act or the State Program will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division, but which are not specifically enumerated in Sections 40-10-20 and 40-10-22 of the Act.

130. Inspection Program.

131. The Division will conduct an average of at least one partial inspection per month of each active coal mining and reclamation operation under its jurisdiction, and will conduct a partial inspection of each inactive coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the State Program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under the State Program.

132. The Division will conduct an average of at least one complete inspection per calendar quarter of each active or inactive coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State Program, within the entire area disturbed or affected by the coal mining and reclamation operation. Abandoned sites may be inspected on a frequency as determined by the procedures set out in the definition of "abandoned sites" which is found in R645-100-200.

133. The Division will conduct inspections of coal explorations as are necessary to ensure compliance with the State Program.

134. Aerial Inspection.

134.100. Aerial inspections will be conducted in a manner which reasonably ensures the identification and documentation of conditions at each coal mining and reclamation operation inspected.

134.200. Any potential violation observed during an aerial inspection will be investigated on-site within three (3) days: provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under section 40-10-22(1)(b) of the Act will be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection will not be considered to be an additional partial or complete inspection for the purposes of R645-400-131 and R645-400-132.

135. The inspections required under R645-400-131 through R645-400-134 will:

135.100. Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

135.200. Occur without prior notice to the permittee or

any agent or employee of such permittee, except for necessary on-site meetings; and

135.300. Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State Program.

136. For the purposes of R645-400 an inactive coal mining and reclamation operation is one for which:

136.100. The Division has secured from the permittee the written notice provided for under R645-301-515.320; or

136.200. Reclamation Phase II as defined at R645-301-880.320 has been completed and the liability of the permittee has been reduced by the Division in accordance with the State Program.

140. Availability of Records.

141. The Division will make available to the Director of the Office, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

142. Copies of all records, reports, inspection materials, or information obtained by the Division will be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except:

142.100. As otherwise provided by federal law; and

142.200. For information not required to be made available under R645-203, R645-300-124 or R645-400-144.

143. The Division will ensure compliance with R645-400-142 by either:

143.100. Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur; or

143.200. At the Division's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur. Provided, that the Division will maintain for public inspection, at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.

144. In order to protect preparation for hearings and enforcement proceedings, the Director of the Office and the Division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

150. Public Participation. The State Program provides for public participation in the enforcement of the State Program in R645-400-200, R645-400-300, R645-401, and the Board's Procedural Rules.

160. Compliance Conference.

161. Compliance conferences between a permittee and an authorized representative of the Division are provided for and described in R645-400-162 through R645-400-165.

162. A permittee may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-19 and R645-400-130, or any applicable permit or exploration approval.

163. The Division may accept or refuse any request to conduct a compliance conference under R645-400-162.

164. The authorized representative at any compliance conference will review such proposed conditions and practices in order to advise whether any such condition or practice may

become a violation of any requirement of the Act, the approved State Program or any applicable permit or exploration approval.

165. Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference will affect:

165.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

165.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

R645-400-200. Information Related to Inspections.

210. Requests for Inspections.

211. A citizen may request a Division inspection under UCA 40-10-22 by furnishing to the Division a signed, written statement (or an oral report followed by a signed, written statement) giving the Division reason to believe that a violation of the State Program or any applicable permit or exploration approval has occurred, and including a phone number and address where the citizen can be contacted.

212. The identity of any person supplying information to the Division relating to a possible violation or imminent danger or harm will remain confidential with the Division if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Utah or federal law.

213. If a Division inspection is conducted as a result of information provided to the Division by a citizen as described in R645-400-211, the citizen will be notified as far in advance as practicable when the inspection is to occur and will be allowed to accompany the authorized representative of the Division during the inspection. Such person has a right of entry to, upon, and through the coal exploration or coal mining and reclamation operation about which he or she provided information, but only if he or she is in the presence of and is under control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant. All citizens so visiting mine sites are required to comply with applicable MSHA safety standards.

214. Within 10 days of the Division inspection or, if there is no inspection within 15 days of receipt of the citizen's written statement, the Division will send the citizen the following:

214.100. If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Division inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

214.200. If no Division inspection was conducted, an explanation of the reason why; and

214.300. An explanation of the citizen's right, if any, to informal review of the action or inaction of the Division under R645-400-240.

215. The Division will give copies of all materials in R645-400-214 within the time limits specified in that Rule to the person alleged to be in violation, except that the name of the citizen will be removed unless disclosure of the citizen's identity is permitted under R645-400-212.

220. Right of Entry.

221. Each authorized representative of the Division conducting an inspection under R645-400 through R645-401:

221.100. Will have a right of entry to, upon, and through any coal exploration or coal mining and reclamation operation without advance notice or a search warrant, upon presentation of appropriate credentials;

221.200. May, at reasonable times and without delay, have

access to and copy any records, and inspect any monitoring equipment or method of operation required under the State Program or any condition of an exploration approval or permit imposed under the State Program; and

221.300. Will have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.

222. No search warrant will be required with respect to any activity under R645-400-221 except that a search warrant may be required for entry into a building.

230. Review of Adequacy and Completeness of Inspection. Any person who is or may be adversely affected by coal mining and reclamation operations or coal exploration operations may notify the Director in writing of any alleged failure on the part of the Division to make adequate and complete or periodic inspections as provided in R645-400-130 or R645-400-210. The notification will contain information to demonstrate the belief that the person is or may be adversely affected including the basis for his or her belief that the Division has failed to conduct the required inspections. The Director will within 15 days of receipt of the notification, determine whether there is sufficient information to create a reasonable belief that R645-400-130 or R645-400-210 are not being complied with, and if not, will immediately order an inspection to remedy the noncompliance. The Director will, also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

240. Review of Decision Not to Inspect or Enforce.

241. Any person who is or may be adversely affected by coal exploration or coal mining and reclamation operations may ask the Director to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for State inspection under R645-400-210. The request for review will be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

242. The Director will conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation will also be given a copy of the results of the review, except that the name of the citizen will not be disclosed unless confidentiality has been waived or disclosure is required under Utah or federal law.

243. Informal review under this section will not affect any right to formal review or to a citizen's suit under the State Program.

R645-400-300. Provisions of State Enforcement.

310. Cessation Orders.

311. The Division will immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the State Program, or any condition of a permit or an exploration approval under the State Program, which:

311.100. Creates an imminent danger to the health or safety of the public; or

311.200. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

312. Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such

operations.

313. If the cessation ordered under R645-400-311 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Division will impose affirmative obligations on the person to whom it is issued to abate the violation. The order will specify the time by which abatement will be accomplished.

314. When a notice of violation has been issued under R645-400-320 and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of coal exploration or coal mining and reclamation operations or of the portion relevant to the violation. A cessation order issued under R645-400-314 will require the permittee to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

315. A cessation order issued under R645-400-311 or R645-400-314 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

315.100. The nature of the violation;

315.200. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

315.300. The time established for abatement, if appropriate, including the time for meeting any interim steps;

315.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies; and

315.500. The order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

316. Reclamation operations and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided in the order.

317. The Division may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

318. The Division will terminate a cessation order by written notice to the permittee, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations under R645-401.

319. Within sixty days after issuing a cessation order, the Division will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or the Division as an owner or controller of the operation, as defined in R645-100-200, that the cessation order was issued and that the person has been identified as an owner or controller.

320. Notices of Violation.

321. The Division will issue a notice of violation if, on the basis of a Division inspection carried out during the enforcement of a State Program it finds a violation of the State Program or any condition of a permit or an exploration approval imposed under the State Program which does not create an imminent danger or harm for which a cessation order must be issued under R645-400-310.

322. When on the basis of any Division inspection other than one described in R645-400-321, the Division determines that there exists a violation of the State Program or any condition of a permit or an exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under R645-400-310, the Division will issue a notice of violation to the permittee or his agent fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a

conference before the Division.

323. A notice of violation issued under R645-400-320 will be in writing, signed by the authorized representative of the Division, and will set forth reasonable specificity:

323.100. The nature of the violation;

323.200. The remedial action required, which may include interim steps;

323.300. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

323.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies.

324. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R645-400-327. An extended abatement date pursuant to this section will not be granted when the permittee's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required.

325. If the permittee fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R645-400-314.

326. The Division will terminate a notice of violation by written notice to the permittee, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Board to assess civil penalties for those violations under R645-401.

327. Circumstances which may qualify a coal mining and reclamation operation for an abatement period of more than 90 days are:

327.100. Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

327.200. Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

327.300. Where the permittee cannot abate within 90 days due to a labor strike;

327.400. Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

327.500. Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

328. Other information on abatement times extended beyond 90 days.

328.100. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

328.200. If any of the conditions in R645-400-327 exists, the permittee may request the authorized representative of the Division to grant an abatement period exceeding 90 days. The authorized representative will not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted will not exceed the

shortest possible time necessary to abate the violation. The permittee will have the burden of establishing by clear and convincing proof that he or she is entitled to any extension under the provisions of R645-400-324 and R645-400-327.

328.300. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative will promptly and fully document in the file his or her reasons for granting or denying the request. The Director or designee of the Director specified in R645-400-328.200 will review this document before concurring in or disapproving the extended abatement date and will promptly and fully document the reasons for his or her concurrence or disapproval in the file.

328.400. Any determination made under R645-400-328.200 or R645-400-328.300 will contain a right of appeal to the Board under R645-400-360.

328.500. No extension granted under R645-400-328.200 or R645-400-328.300 may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of R645-400-328.200.

329. Enforcement actions at abandoned sites. The Division may refrain from using a notice of violation or cessation order for a violation at an abandoned site, as defined in R645-100-200., if abatement of the violation is required under any previously issued notice on order.

330. Suspension or Revocation of Permits.

331. The Board will issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the State Program should not be suspended or revoked, if the Board determines that a pattern of violations of any requirements of the State Program, or any permit condition required by the Act exists or has existed, and that each violation was caused by the permittee willfully or through an unwarranted failure to comply with those requirements or conditions. A finding of unwarranted failure to comply will be based upon a demonstration of greater than ordinary negligence on the part of the permittee. Violations by any person conducting coal mining and reclamation operations on behalf of the permittee will be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

332. Pattern of Violation.

332.100. The Director may determine that a pattern of violations exists or has existed, based upon two or more Division inspections of the permit area within a 12-month period, after considering the circumstances, including:

332.110. The number of violations, cited on more than one occasion, of the same or related requirements of the State Program or the permit; and

332.120. The number of violations, cited on more than one occasion, of different requirements of the State Program or the permit; and

332.130. The extent to which the violations were isolated departures from lawful conduct.

332.200. If after the review described in R645-400-332, the Director determines that a pattern of violation exists or has existed and that each violation was caused by the permittee willfully or through unwarranted failure to comply, he or she will recommend that the Board issue an order to show cause as provided in R645-400-331.

332.300. The Director will promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the State Program, or the permit during three or more state inspections of the permit area within a 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he

or she will recommend that the Board issue an order to show cause as provided in paragraph R645-400-331.

333. Number of Violations.

333.100. In determining the number of violations within a 12-month period, the Director will consider only violations issued as a result of a state inspection carried out during enforcement of the State Program.

333.200. The Director may not consider violations issued as a result of inspections other than those mentioned in R645-400-333.100 in determining whether to exercise his or her discretion under R645-400-332.100, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

334. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director will review the permittee's history of violations to determine whether a pattern of violations caused by the permittee's willful or unwarranted failure to comply exists pursuant to this section, and will make a recommendation to the Board concerning whether or not an order to show cause should issue pursuant to R645-400-331.

335. Hearing Procedures.

335.100. If the permittee files an answer to the show cause order and requests a hearing, a formal public hearing on the record will be conducted pursuant to the R641 Rules before the Board or at the Board's option by an administrative hearing officer. The hearing officer will be a person who meets minimum requirements for a hearing officer under Utah law. At such hearing the Division will have the burden of establishing a prima facie case for suspension or revocation of the permit based upon clear and convincing evidence. The ultimate burden of persuasion that the permit should not be suspended or revoked will rest with the permittee.

The Board or Officer will give 30 days written notice of the date, time and place of the hearing to the Director, the permittee and any intervenor. Upon receipt of the notice the Director will publish it, if practicable, in a newspaper of general circulation in the area of the coal mining and reclamation operations, and will post it at the Division office closest to those operations. Upon written request by the permittee, such hearing may at the Board's option be held at or near the mine site within the county in which the permittee's operations are located.

335.200. Within 60 days after the hearing, the Board will prepare a written determination, or the Officer will prepare a written determination to the Board, as to whether or not a pattern of violation exists. If the determination is prepared by the hearing officer, it will be reviewed by the Board which will make the final decision thereon. If the Board finds a pattern of violations and revokes or suspends the permit and the permittee's right to mine under the State Program, the permittee will immediately cease coal mining operations on the permit area and will:

335.210. If the permit and the right to mine under the State Program are revoked, complete reclamation within the time specified in the order; or

335.220. If the permit and the right to mine under the State Program are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

340. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

341. A notice of violation or cessation order will be served on the permittee or his designated agent promptly after issuance, as follows:

341.100. By tendering a copy at the coal exploration or coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal

exploration or coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the permittee. Service will be complete upon tender of the notice or order and will not be deemed incomplete because of refusal to accept.

341.200. As an alternative to R645-400-341.100, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his designated agent. Service will be complete upon tender of the notice or order by mail and will not be deemed incomplete because of refusal to accept.

342. A show cause order may be served on the permittee in either manner provided in R645-400-341.

343. Designation by any person of an agent for service of notices and orders will be made in writing to the Division.

350. Informal Public Hearing.

351. Except as provided in R645-400-352 and R645-400-353 a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, will expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing will be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Division and the permittee. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division. Expiration of a notice or order will not affect the Board's right to assess civil penalties for the violations mentioned in the notice or order under R645-401.

352. A notice of violation or cessation order will not expire as provided in R645-400-351, if the condition, practice or violation in question has been abated or if the informal public hearing has been waived, or if, with the consent of the permittee, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of R645-400-352:

352.100. The informal public hearing will be deemed waived if the permittee:

352.110. Is informed, by written notice served in the manner provided in R645-400-352.200, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

352.120. Fails to request an informal public hearing within that time;

352.200. The written notice referred to in R645-400-352.110 will be delivered to the permittee by an authorized representative or sent by certified mail to the permittee no later than five days after the notice or order is served on the permittee; and

352.300. The permittee will be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

353. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

353.100. The permittee; and

353.200. Any person who filed a report which led to that notice or order.

354. The Division will also post notice of the hearing at the office closest to the mine site, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

355. An informal public hearing will be conducted by a representative of the Board who may accept oral or written arguments and any other relevant information from any person attending.

356. Within five days after the close of the informal public

hearing, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to:

356.100. The permittee; and

356.200. Any person who filed a report which led to the notice or order.

357. The granting or waiver of an informal public hearing will not affect the right of any person to formal review under UCA 40-10-22-(3). At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing will be introduced as evidence or to impeach a witness.

360. Board Review of Citations.

361. Petition Process.

361.100. A permittee issued a notice of violation or cessation order under R645-400-320 or R645-400-310 or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of the Division's action by filing an application for review and request for hearing pursuant to UCA 40-10-22(3) and the Board's Rules within 30 days after receiving notice of the action.

361.200. Upon written petition by the operator or an interested party, the Board, at its discretion, or a hearing examiner appointed by the Board, pursuant to UCA 40-6-10(6), may be requested to hold a hearing at the site of the operation or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

361.300. The Board will issue an order concerning the cessation order within 30 days after its next regularly scheduled hearing of receipt of the petition for review of the Division's cessation order.

362. The filing of a petition for review and request for a hearing under R645-400-360 will not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

370. Inability to Comply.

371. No cessation order or notice of violation issued under R645-400-300 may be vacated because of inability to comply.

372. Inability to comply may not be considered in determining whether a pattern of violations exists.

373. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R645-401 and of the duration of the suspension of a permit under R645-400-330.

380. Compliance Conference.

381. A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-19 or R645-400-100.

382. The Division may accept or refuse any request to conduct a compliance conference under R645-400-381. Where the Division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference will be given to the permittee.

383. The authorized representative at any compliance conference will review such proposed conditions and practices as the permittees may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act or of any applicable permit or exploration proposal.

384. Neither the holding of any compliance conference under R645-400-380 nor any opinion given by the authorized representative at such a conference will affect:

384.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

384.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

390. Injunctive Relief.

391. The Division may request the Utah Attorney General's office to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court for the district in which the coal exploration or coal mining and reclamation operation is located or in which the permittee has his principal office, whenever that permittee, in violation of the State Program or any condition of an exploration approval or permit:

391.100. Violates or fails or refuses to comply with any order or decision of the Division under the State Program;

391.200. Interferes with, hinders or delays the Division in carrying out the provisions of the State Program;

391.300. Refuses to admit the Division to a mine;

391.400. Refuses to permit inspection of a mine by the Division;

391.500. Refuses to furnish any required information or report;

391.600. Refuses to permit access to or copying of any required records; or

391.700. Refuses to permit inspection of monitoring equipment.

392. No citizen suits may be brought pursuant to UCA 40-10-21 if the Board, Division or State Attorney General has commenced and is diligently prosecuting a civil action under R645-400-391, however, in any such action in a state court any interested person may intervene as permitted by and in accordance with Rule 24 of the Utah Rules of Civil Procedure.

KEY: reclamation, coal mines

May 23, 2012

40-10-1 et seq.

Notice of Continuation August 5, 2014

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.**R649-10. Administrative Procedures.****R649-10-1. Designation of Informal Adjudicative Proceedings.**

1. Adjudicative proceedings which shall be conducted informally before the division in accordance with these rules are all actions prescribed by the Oil and Gas Conservation General Rules as being specifically under the division's authority and jurisdiction including: R649-2 General Rules; R649-3 Drilling and Operating Practices; R649-5 Underground Injection Control of Recovery Operations and Class II Injection Wells; R649-6 Gas Processing and Waste Crude Oil Treatment; R649-8 Reporting and Report Forms; R649-9 Disposal of Produced Water.

2. Prior to the issuance of a final order in any adjudicative proceeding, the presiding officer may convert an informal proceeding to a formal adjudicative proceeding if:

2.1. Conversion of the proceeding is in the public interest.

2.2. Conversion of the proceeding does not unfairly prejudice the rights of any party.

3. Informal adjudicative proceedings shall be commenced and conducted in accordance with these rules and the provisions of the applicable Oil and Gas Conservation General Rules. In case of conflict between these rules and the Oil and Gas Conservation General Rules, these rules shall govern the informal adjudicative proceedings.

R649-10-2. Definitions.

As used in these rules:

1. "Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions.

2. "Agency" means the Board of Oil, Gas and Mining and the Division of Oil, Gas and Mining including the director or division employees acting on behalf of or under the authority of the director or board.

3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

4. "Board" means the Board of Oil, Gas and Mining.

5. "Division" means the Division of Oil, Gas and Mining.

6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

7. "Party" means the board, division, or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

8. "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

9. "Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the board, or its appointed hearing examiner, shall be considered the presiding officer of all appeals or informal adjudicative proceedings which commence before the division as well as all adjudicative proceedings which commence before the board. The director or his designated agent shall be considered a presiding officer for all informal adjudicative proceedings which commence before the division. If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during

any proceeding.

10. "Respondent" means any person against whom an adjudicative proceeding is initiated whether by an agency or any other person.

R649-10-3. Commencement of Informal Adjudicative Proceedings.

1. Except for emergency orders, all informal adjudicative proceedings shall be commenced by:

1.1. A Notice of Agency Action, if proceedings are commenced by the board or division; or

1.2. A Request for Agency Action, if proceedings are commenced by persons other than the board or division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

2.1. The Notice of Agency Action shall be in writing and shall be signed by a presiding officer and shall include:

2.1.1. 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 agency.

2.1.2. The division's file number or other reference number.

2.1.3. The name of the adjudicative proceeding.

2.1.4. The date that the Notice of Agency Action was mailed.

2.1.5. A statement that the adjudicative proceeding is to be conducted informally according to the provision of these rules and Sections 63G-4-202 and 63G-4-203 if applicable.

2.1.6. A statement that the parties may request an informal hearing before the division within ten days, or such later period as may be provided for in the Oil and Gas Conservation General Rules, of the date of mailing or publication.

2.1.7. A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained.

2.1.8. The name, title, mailing address, and telephone number of the presiding officer.

2.1.9. A statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

2.2. The Division shall:

2.2.1. Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule.

2.2.2. Publish the Notice of Agency Action as required by statute or by the Oil and Gas Conservation General Rules.

2.2.3. Post a copy of the notice in a public area in the main office of the division at least 24 hours in advance of the scheduled agency proceeding.

2.3. A Request for Agency Action initiated by a person other than the board or the division shall be in writing and signed by the person seeking action by the agency or by his representative, and shall include:

2.3.1. The names and addresses of all persons to whom a copy of the request for agency action is being sent.

2.3.2. The agency's file number or other reference number, if known.

2.3.3. The date that the request for agency action was mailed.

2.3.4. A statement of the legal authority and jurisdiction under which the agency action is requested.

2.3.5. A statement of the relief or action sought from the division.

2.3.6. A statement of the facts and reasons forming the basis for relief or action.

2.4. The person requesting agency action shall file the request with the division and shall send a copy by mail to each person known to have a direct interest in the requested agency action unless previously waived in writing by each person entitled to receive notice of the requested agency action.

2.5. The person requesting the agency action may use the division forms as specified in the Oil and Gas Conservation General Rules as a request for agency action.

2.6. The presiding officer shall promptly review a Request for Agency Action and shall:

2.6.1. Notify the requesting party in writing whether the request is granted and when the adjudicative proceeding is completed;

2.6.2. Notify the requesting party in writing that the request is denied; or

2.6.3. Notify the requesting party that further proceedings are required to determine the agency's response to the request.

2.7. The division shall mail any required notice to all parties, except that any notice required by R649-10-3-2.6 may be published when publication is required by statute.

2.7.1. Give the division's file number or other reference number.

2.7.2. Give the name of the proceeding.

2.7.3. Designate that the proceeding is to be conducted informally according to the provisions of these rules and Sections 63G-4-202 and 63G-4-203 if applicable.

2.7.4. If a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default.

2.7.5. If the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party with the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules.

2.7.6. Give the name, title, mailing address, and telephone number of the presiding officer.

R649-10-4. Procedures for Informal Adjudicative Proceedings.

1. Procedures for informal adjudicative proceedings should include the following:

1.1. Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.

1.2. The agency shall hold a hearing if a hearing is requested within ten days or such later period as may be provided for in the Oil and Gas Conservation General Rules.

1.3. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency Action shall be permitted to testify, present evidence, and comment on the issues.

1.4. Hearings will be held only after timely notice to all parties.

1.5. Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

1.6. All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

1.7. Intervention is prohibited, except where a federal statute or rule requires that a state permit intervention.

1.8. All hearings shall be open to all parties.

1.9. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

1.9.1. The decision.

1.9.2. The reasons for the decision.

1.9.3. A notice of any right of administrative or judicial review available to the parties.

1.9.4. A statement that the filing of an appeal or the

requesting of a review shall be accomplished within 30 days of the issuance of the order.

1.10. The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

1.11. A copy of the presiding officer's order shall be promptly mailed to each of the parties and to all persons who request a copy.

2.1. The agency may record any hearing.

2.2. Any party, at his own expense, may have a reporter, approved by the agency, prepare a transcript from the agency's record of the hearing.

3.0. Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

R649-10-5. Default In An Informal Proceeding.

1. The presiding officer may enter an order of default against:

1.1. A party in an informal adjudicative proceeding if after proper notice the party fails to participate in the informal adjudicative proceeding.

2.0. An order of default shall include a statement of the grounds for default and shall be mailed to all parties.

3.1. A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.

3.2. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

3.3. A defaulted party may seek board review under R649-10-6 only on the decision of the presiding officer on the motion to set aside the default.

4.0. In an adjudicative proceeding commenced by the agency, or in an adjudicative proceeding commenced by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

5.0. In an adjudicative proceeding that has no parties other than the agency and the party(ies) in default, the presiding officer may, after issuing the order(s) of default, dismiss the proceeding.

R649-10-6. Appeal of Division Order.

1. A request for review of an order issued by the division shall be filed with the secretary to the Board within 30 days of issuance of the order and:

1.1. Be signed by the party seeking review.

1.2. State the grounds for review and the relief requested.

1.3. State the date upon which it was mailed.

1.4. Be sent by mail to the presiding officer and to each party.

2. Within 15 days of the mailing date of request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the board. One copy of the response shall be sent by mail to each of the parties and to the presiding officer.

3. The board shall review the order within a reasonable time or within the time required by statute or the agency's rules.

4. To assist in review, the board may by order or rule permit the parties to file briefs or other papers, or to conduct oral argument.

5. Notice of hearings on review shall be mailed to all parties.

6.1. Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the board shall issue a

written order on review.

6.2. The order on review shall be signed by the board chairman or by a person designated by the board for that purpose and shall be mailed to each party.

6.3. The order on review shall contain:

6.3.1. A designation of the statute or rule permitting or requiring review.

6.3.2. A statement of the issues reviewed.

6.3.3. Findings of fact as to each of the issues reviewed.

6.3.4. Conclusions of law as to each of the issues reviewed.

6.3.5. The reasons for the disposition.

6.3.6. Whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded.

6.3.7. A notice of any right of further administrative reconsideration or judicial review available to aggrieved parties.

6.3.8. The time limits applicable to any appeal or review.

R649-10-7. Emergency Orders.

Notwithstanding the other provisions of these rules, the director or any member of the board is authorized to issue an emergency order without notice and hearing in accordance with Section 40-6-10. The emergency order shall remain in effect no longer than until the next regular meeting of the board, or such shorter period of time as shall be prescribed by statute.

1. An emergency order may be issued if:

1.1. The facts known by or presented to the director or board member are supported by affidavit to show that an immediate and significant danger of waste or other danger to the public health, safety, or welfare exists; and

1.2. The threat requires immediate action by the director or board member,

2. Limitations. In issuing its emergency order, the director or board member shall:

2.1. Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

2.2. Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings;

2.3. Give immediate notice to the persons who are required to comply with the order; and

2.4. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the division shall commence a formal adjudicative proceeding in accordance with the procedural rules of the board.

R649-10-8. Exhaustion of Administrative Remedies.

A person aggrieved by a division order in an adjudicative proceeding must seek review of that order by the board as provided in R649-10-6.

R649-10-9. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person(s) by a signed, written waiver in a form acceptable to the division.

**KEY: oil and gas law
December 18, 1996
Notice of Continuation August 5, 2014**

**40-6-1 et seq.
63G-4**

R657. Natural Resources, Wildlife Resources.**R657-3. Collection, Importation, Transportation, and Possession of Animals.****R657-3-1. Purpose and Authority.**

(1) Under Title 23, Wildlife Resources Code of Utah and in accordance with a memorandum of understanding with the Department of Agriculture and Food, Department of Health, and the Division of Wildlife Resources, this rule governs the collection, importation, exportation, transportation, and possession of animals and their parts.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) In addition to this rule, the Wildlife Board may allow the collection, importation, transportation, propagation and possession of species of animal species under specific circumstances as provided in Rules R657-4 through R657-6, R657-9 through R657-11, R657-13, R657-14, R657-16, R657-19, R657-20 through R657-22, R657-33, R657-37, R657-38, R657-40, R657-41, R657-43, R657-44, R657-46 and R657-52 through R657-60. Where a more specific provision has been adopted, that provision shall control.

(4) The importation, distribution, relocation, holding in captivity or possession of coyotes and raccoons in Utah is governed by the Agricultural and Wildlife Damage Prevention Board and is prohibited under Section 4-23-11 and Rule R657-14, except as permitted by the Utah Department of Agriculture and Food.

(5) This rule does not apply to division employees acting within the scope of their assigned duties.

(6) The English and scientific names used throughout this rule for animals are, at the time of publication, the most widely accepted names. The English and the scientific names of animals change, and the names used in this rule are to be considered synonymous with names in earlier use and with names that, at any time after publication of this rule, may supersede those used herein.

R657-3-2. Species Not Covered by This Rule.

The following species of animals are not governed by this rule:

- (1) Alpaca (*Lama pacos*);
- (2) Ass or donkey (*Equus asinus*);
- (3) American bison, privately owned (*Bos bison*);
- (4) Camel (*Camelus bactrianus* and *Camelus dromedarius*);
- (5) Cassowary (All species)(*Casuarius*);
- (6) Cat, domestic, including breeds that are recognized by The International Cat Association as Preliminary New, Advanced New, Non-championship, and Championship Breeds (*Felis catus*);
- (7) Cattle (*Bos taurus taurus*);
- (8) Chicken (*Gallus gallus*);
- (9) Chinchilla (*Chinchilla laniger*);
- (10) Dog, domestic including hybrids between wild and domestic species and subspecies (*Canis familiaris*);
- (11) Ducks distinguishable morphologically from wild birds (*Anatidae*);
- (12) Elk, privately owned (*Cervus elaphus canadensis*);
- (13) Emu (*Dromaius novaehollandiae*);
- (14) Ferret or polecat, European (*Mustela putorius*);
- (15) Fowl (guinea) (*Numida meleagris*);
- (16) Fox, privately owned, domestically bred and raised (*Vulpes vulpes*);
- (17) Geese, distinguishable morphologically from wild geese (*Anatidae*);

(18) "Gerbils" or Mongolian jirds (*Meriones unguiculatus*);

(19) Goat (*Capra hircus*);

(20) Hamster (All species) (*Mesocricetus spp.*);

(21) Hedgehog (white bellied)(*Erinaceidae atelerix albiventris*)

(22) Horse (*Equus caballus*);

(23) Llama (*Lama glama*);

(24) American Mink, privately owned, ranch-raised (*Neovision vision*);

(25) Mouse, house (*Mus musculus*);

(26) Mule and hinny (hybrids of *Equus caballus* and *Equus asinus*);

(27) Ostrich (*Struthio camelus*);

(28) Peafowl (*Pavo cristatus*);

(29) Pig, guinea (*Cavia porcellus*);

(30) Pigeon (*Columba livia*);

(31) Rabbit, European (*Oryctolagus cuniculus*);

(32) Rats, Norway and Black (*Rattus norvegicus* and *Rattus rattus*);

(33) Rhea (*Rhea americana*);

(34) Sheep (*Ovis aries*);

(35) Sugar glider (*Petaurus breviceps*);

(36) Swine, domestic (*Sus scrofa domesticus*);

(37) Turkey, privately owned, pen-raised domestic varieties (*Meleagris gallopavo*). Domestic varieties means any turkey or turkey egg held under human control and which is imprinted on other poultry or humans and which does not have morphological characteristics of wild turkeys;

(38) Water buffalo (*Bubalis arnee*);

(39) Yak (*Bos mutus*); and

(40) Zebu, or "Brahma" (*Bos taurus indicus*)

R657-3-3. Cooperative Agreements with Department of Health and Department of Agriculture and Food -- Agency Responsibilities.

(1) The division, the Department of Agriculture and Food, and the Department of Health work cooperatively through memorandums of understanding to:

(a) protect the health, welfare, and safety of the public;

(b) protect the health, welfare, safety, and genetic integrity of wildlife, including environmental and ecological impacts; and

(c) protect the health, welfare, safety, and genetic integrity of domestic livestock, poultry, and other animals.

(2) The division is responsible for:

(a) issuing certificates of registration for the collection, possession, importation, and transportation of animals;

(b) maintaining the integrity of wild and free-ranging protected wildlife;

(c) determining the species of animals that may be imported, possessed, and transported within the state;

(d) preventing the outbreak and controlling the spread of disease-causing pathogens among aquatic animals in public aquaculture facilities;

(e) preventing the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from public aquaculture facilities and private ponds to aquatic wildlife, other animals, and humans;

(f) preventing the spread of disease-causing pathogens from aquatic animals to other aquatic animals transferred from one site to another in the wild;

(g) investigating and preventing the outbreak and controlling the spread of disease-causing pathogens in terrestrial wildlife;

(h) preventing the spread of disease-causing pathogens from terrestrial animals to other terrestrial animals transferred from one site to another; and

(i) enforcing laws and rules made by the Wildlife Board governing the collection, importation, transportation, and

possession of animals.

(3)(a) The Utah Department of Agriculture and Food is responsible for eliminating, reducing, and preventing the spread of diseases among livestock, fish, poultry, wildlife, and other animals by providing standards for:

(i) the importation of livestock, fish, poultry, and other animals, including wildlife, as provided in Section R58-1-4;

(ii) the control of predators and depredating animals as provided in Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act;

(iii) enforcing laws and rules made by the Wildlife Board governing species of animals which may be imported into the state or possessed or transported within the state that are applicable to aquaculture or fee fishing facilities;

(iv) preventing the outbreak and controlling the spread of disease-causing pathogens among aquatic animals in aquaculture and fee fishing facilities; and

(v) preventing the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from aquaculture or fee fishing facilities to aquatic wildlife, or other animals, and humans.

(b) The Department of Agriculture and Food may quarantine any infected domestic animal or area within the state to prevent the spread of infectious or contagious disease as provided in Title 4, Chapter 31, Section 17.

(c) In addition to the authority and responsibilities listed in Subsection (3)(a) and (b), the Department of Agriculture and Food may make recommendations to the division concerning the collection, importation, transportation, and possession of animals if a disease is suspected of endangering livestock, fish, poultry, or other domestic animals.

(4) The Utah Department of Health is responsible for promoting and protecting public health and welfare and may make recommendations to the division concerning the collection, importation, transportation, and possession of animals if a disease or animal is suspected of endangering public health or welfare.

R657-3-4. Definitions.

(1) Terms used for purposes of this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (29).

(2)(a) "Animal" means:

(i) native, naturalized, and nonnative animals belonging to a species that naturally occurs in the wild, including animals captured from the wild or born or raised in captivity;

(ii) hybrids of any native, naturalized, or nonnative species or subspecies of animal, including hybrids between wild and domestic species or subspecies; and

(iii) viable embryos or gametes (eggs or sperm) of any native, naturalized, or nonnative species or subspecies of animals.

(b) "Animal" does not include species listed in Subsection R657-3-2, domestic species, or amphibians or reptiles as defined in Rule R657-53.

(3) "Aquaculture" means the controlled cultivation of aquatic animals.

(4)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility or fee fishing facility.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain to, different drainages, are considered separate aquaculture facilities regardless of ownership.

(5) "Aquatic animal" means a member of any species of fish, mollusk, or crustacean, including their eggs or sperm.

(6) "Captive-bred" means any privately owned animal, which is born inside of and has spent its entire life in captivity and is the offspring of privately owned animals that are born

inside of and have spent their entire life in captivity.

(7) "Certificate of registration" means an official document issued by the division authorizing the collection, importation, transportation, and possession of an animal or animals. A certificate of registration number may be issued in order to obtain an entry permit number and the entry permit number must in turn be provided to the division before final approval and issuance of the certificate of registration.

(8) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of animals, as provided in Rule R58-1.

(9) "CFR" means the Code of Federal Regulations.

(10) "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(a) Appendix I of CITES protects threatened species from all international commercial trade; and

(b) Appendix II of CITES regulates trade in species not threatened with extinction, but which may become threatened if trade goes unregulated.

(c) CITES appendices are published periodically by the CITES Secretariat and may be viewed at <http://www.cites.org/> which is incorporated herein by reference.

(11) "Collect" means to take, catch, capture, salvage, or kill any animal within Utah.

(12) "Commercial use" means any activity through which a person in possession of an animal:

(a) receives any consideration for that animal or for a use of that animal, including nuisance control and roadkill removal; or

(b) expects to recover all or any part of the cost of keeping the animal through selling, bartering, trading, exchanging, breeding, or other use, including displaying the animal for entertainment, advertisement, or business promotion.

(13) "Controlled species" means a species or subspecies of animal that if taken from the wild, introduced into the wild, or held in captivity, poses a possible significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.

(14) "Domestic" means an animal that belongs to a species which is notably different from its wild ancestors through generations of selective breeding and taming in captivity by humans for food, commodities, transportation, assistance, work, protection, companionship, display and other beneficial purposes.

(15) "Educational use" means the possession and use of an animal for conducting educational activities concerning wildlife.

(16) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection. The entry permit number must be written on the certificate of veterinary inspection before the importation of the animal. This number must be provided to the division prior to final approval and issuance of a certificate of registration. The entry permit is valid only for 30 days after its issuance.

(17) "Export" means to move or cause to move any animal from Utah by any means.

(18) "Fee fishing facility" means a body of water used for holding or rearing fish to provide fishing for a fee or pecuniary consideration or advantage.

(19) "Import" means to bring or cause an animal to be brought into Utah by any means.

(20) "Native species" means any species or subspecies of animal that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.

(21) "Naturalized species" means any species or subspecies of animal that is not native to Utah but has established a wild, self-sustaining population in Utah.

(22) "Noncontrolled species" means a species or subspecies of animal that if taken from the wild, introduced into the wild, or held in captivity poses no detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.

(23)(a) "Nonnative species" means a species or subspecies of animal that is not native to Utah.

(b) "Nonnative species" does not include domestic animals or naturalized species of animals.

(24)(a) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display.

(b) "Ornamental aquatic animal species" does not include;

(i) fresh water;

(A) sport fish - aquatic animal species commonly angled or harvested for recreation or sport;

(B) baitfish - aquatic animal species authorized for use as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;

(C) food fish - aquatic animal species commonly cultured or harvested from the wild for human consumption; or

(D) native species; or

(ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or

(iii) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23.

(25) "Personal use" means the possession and use of an animal for a hobby or for its intrinsic pleasure and where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, hunting or any other use.

(26) "Possession" means to physically retain or to exercise dominion or control over an animal.

(27) "Prohibited species" means a species or subspecies of animal that if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued in accordance with this rule and any applicable federal laws.

(28) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture by the division, U.S. Fish and Wildlife Service, a school, or an institution of higher education.

(29) "Resident Canada Goose" means Canada geese that nest within Utah in urban environments during the months of March, April, May or June.

(30) "Scientific use" means the possession and use of an animal for conducting scientific research that is directly or indirectly beneficial to wildlife or the general public.

(31) "Transport" means to move or cause to move any animal within Utah by any means.

(32) "Wildlife Registration Office" means the division office in Salt Lake City responsible for processing applications and issuing certificates of registration.

R657-3-5. Liability.

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, possession and propagation of the authorized animal and for any other activity authorized by the certificate of registration.

(b) To the extent provided under the Utah Governmental Immunity Act, the division, Department of Agriculture and Food, and Department of Health shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing animals.

R657-3-6. Animal Welfare.

(1) Any animal held in possession under the authority of a certificate of registration shall be maintained under humane and healthy conditions, including the humane handling, care, confinement, transportation, and feeding, as provided in:

(a) 9 CFR Section 3 Subpart F, 2002 ed., which is adopted and incorporated by reference;

(b) Section 76-9-301; and

(c) Section 7 CFR 2.17, 2.51, and 371.2(g), 2002 ed., which are incorporated by reference.

(2) A person commits cruelty to animals under this section if that person intentionally, knowingly, or with criminal negligence, as defined in Section 76-2-103:

(a) tortures or seriously overworks an animal; or

(b) fails to provide necessary food, care, or shelter for any animal in that person's custody.

(3) Adequate measures must be taken for the protection of the public when handling, confining, or transporting any animal.

R657-3-7. Take of Nuisance Birds and Mammals.

(1)(a) A person is not required to obtain a certificate of registration or a federal permit to kill a bird belonging to a species listed in Subsection (1)(b) that is committing or about to commit depredations on ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance, provided:

(i) an attempt to control the birds using non-lethal methods occurs prior to using lethal methods;

(ii) applicable local, state and federal laws are strictly complied with; and

(iii) none of the birds killed, nor their plumage, are sold or offered for sale.

(b) The following bird species are subject to the provisions of Subsection (1)(a):

(i) black-billed magpie (*Pica hudsonia*);

(ii) American crow (*Corvus brachyrhynchos*);

(iii) bronzed cowbird (*Molothrus aeneus*);

(iv) brown-headed cowbird (*Molothrus ater*); and

(v) shiny cowbird (*Molothrus bonariensis*).

(c) Nuisance birds removed under Subsection (1)(a):

(i) must be taken over the threatened area;

(ii) may not be taken with:

(A) bait, explosives, or poisons; or

(B) ammunition with lead or toxic projectiles, except when fired from an air rifle, air pistol, or a 22 caliber rimfire firearm; and

(iii) must be disposed of at a landfill that accepts wildlife carcasses, or burned or incinerated.

(d)(i) Any person that takes a nuisance bird pursuant to Subsection (1)(a) must provide to the appropriate U.S. Fish and Wildlife Service, Regional Migratory Bird Permit Office an annual report for each species taken.

(ii) Reports must be submitted by January 31st of the following year, and include the following information:

(A) name, address, phone number, and e-mail address of the person taking the birds;

(B) the species and number of birds taken;

(C) the months in which the birds were taken;

(D) the county or counties in which the birds were taken;

and

(E) the general purpose for which the birds were taken, such as protection of agriculture, human health and safety, property, or natural resources.

(e) This Subsection (1) incorporates Section 50 CFR 21.41, 21.42 and 21.43, 2007, ed., by reference.

(2)(a) A person is not required to obtain a certificate of registration or a federal permit to kill a house sparrow (*Passer domesticus*), European starling (*Sturnus vulgaris*), or domestic pigeon or rock pigeon (*Columba livia*) when found damaging personal or real property, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance, provided:

(i) an attempt to control the birds using non-lethal methods occurs prior to using lethal methods;

(ii) applicable local, state and federal laws are strictly complied with; and

(iii) none of the birds killed, nor their plumage, are sold or offered for sale.

(b) Nuisance birds removed under Subsection (2)(a):

(i) must be taken over the threatened area;

(ii) may not be taken with bait, explosives, or poisons; and

(iii) must be disposed of at a landfill that accepts wildlife carcasses, or burned or incinerated.

(3) A person that takes a nuisance bird pursuant to Subsection (1) shall:

(a) allow any federal warden or state conservation officer unrestricted access over the premises where the birds are killed; and

(b) furnish any information concerning the control operations to the division or federal official upon request.

(4) A person may kill nongame mammals as provided in R657-19

R657-3-8. Collection, Importation, and Possession of Threatened and Endangered Species and Migratory Birds.

(1) The following species are prohibited from collection, possession, and importation into Utah without first obtaining a certificate of registration from the division, a federal permit from the U.S. Fish and Wildlife Service, and an entry permit number from the Department of Agriculture and Food if importing:

(a) any species which have been determined by the U.S. Fish and Wildlife Service to be endangered or threatened pursuant to the federal Endangered Species Act, as amended; and

(b) any species of migratory birds protected under the Migratory Bird Treaty Act.

(2) Federal laws and regulations apply to threatened and endangered species and migratory birds in addition to state and local laws.

(3) Neither a federal permit nor a state certificate of registration is required to destroy the nests and eggs of resident Canada geese provided:

(a) the landowner or agent qualifies, registers and complies with all provisions of the Federal Nest and Egg Registry located at www.fws.gov/permits/mbpermits/GooseEggRegistration.html.

(b) The landowner reports to the state the date, location (including county) and number of eggs and nests destroyed, by October 1 of each year to the Wildlife Registration Coordinator.

R657-3-9. Release of Animals to the Wild -- Capture or Disposal of Escaped Wildlife.

(1)(a) Except as provided in this rule, the rules and regulations of the Wildlife Board, or Title 4, Chapter 37 of the Utah Code, a person may not release to the wild or release into any public or private waters any animal, including fish, without first obtaining authorization from the division.

(b) A violation of this section is punishable under Section 23-13-14.

(2) The division may seize or dispose of any illegally held animal.

(3)(a) Any peace officer, division representative, or authorized animal control officer may seize or dispose of any live animal that escapes from captivity.

(b) The division may retain custody of any recaptured animal until the costs of recapture or care have been paid by its owner or keeper.

R657-3-10. Inspection of Animals, Facilities, and Documentation.

(1) A conservation officer or any other peace officer may require any person engaged in activities regulated by this rule to exhibit:

(a) any documentation related to activities covered by this rule, including certificates of registration, permits, certificates of veterinary inspection, certification, bills of sale, or proof of ownership or legal possession;

(b) any animal; or

(c) any device, apparatus, or facility used for activities covered by this rule.

(2) Inspection shall be made during business hours.

R657-3-11. Certificate of Registration.

(1)(a) A person shall obtain a certificate of registration before collecting, importing, transporting, possessing, or propagating any species of animal or its parts classified as prohibited or controlled, except as otherwise provided in this rule, statute or rules and orders of the Wildlife Board.

(b) A certificate of registration is not required:

(i) to collect, import, transport, possess, or propagate any species or subspecies of animal classified as noncontrolled;

(ii) to export any species or subspecies of animal from Utah, provided that the animal is held in legal possession; or

(iii) to collect, transport or possess brine shrimp and brine shrimp eggs for personal use, provided:

(A) the brine shrimp and brine shrimp eggs are collected, transported and possessed together with water in a container no larger than one gallon;

(B) no more than a one gallon container of brine shrimp and brine shrimp eggs, including water, is collected during any consecutive seven day period; and

(C) the brine shrimp or brine shrimp eggs following possession are not released live into the Great Salt Lake, Sevier River or any of their tributary waters.

(c) Applications for animals classified as prohibited shall not be accepted by the division without providing written justification describing how the applicant's proposed collection, importation, or possession of the animal meets the criteria provided in Subsections R657-3-20(1)(b) or R657-3-18(4)(b).

(2)(a) Certificates of registration are not transferable and expire December 31 of the year issued, except as otherwise designated on the certificate of registration.

(b) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall expire effective upon the date of the representative's discontinuation of association with that entity.

(c) Certificates of registration do not provide the holder any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer or death of the COR holder.

(3)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for periodic regulation and

monitoring by the division.

(4) In addition to this rule, the division may impose specific requirements on the holder of the certificate of registration necessary for the safe and humane handling and care of the animal involved, including requirements for veterinary care, cage or holding pen sizes and standards, feeding requirements, social grouping requirements, and other requirements considered necessary by the division for the health and welfare of the animal or the public.

(5)(a) Upon or before the expiration date of a certificate of registration, the holder must apply for a renewal of the certificate of registration to continue the activity.

(b) The division may use the criteria provided in Section R657-3-14 in determining whether to renew the certificate of registration.

(c) It is unlawful for a person to possess an animal for which a certificate of registration is required if that person;

(i) does not have a valid certificate of registration authorizing possession of the animal; or

(ii) fails to submit a renewal application to the division prior to the expiration of an existing certificate of registration authorizing possession of the animal.

(d) If a renewal application is not submitted to the division by the expiration date, live or dead animals held in possession under the expired certificate of registration shall be considered unlawfully held and may be seized by the division.

(e) If a renewal application is submitted to the division before the expiration date of the existing certificate of registration, continued possession of the animal under the expired certificate of registration shall remain lawful while the renewal application is pending.

(6) Failure to submit timely, accurate, or valid reports as required under Section R657-3-16 or the terms of a certificate of registration may disqualify a person from renewing an existing certificate of registration or obtaining a new certificate of registration.

(7) A certificate of registration may be suspended as provided in this rule, Section 23-19-9 and Rule R657-26.

R657-3-12. Application Procedures -- Fees.

(1)(a) Initial and renewal applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.

(b) Applications may require a minimum of 45 days for review and processing from the date the application is received.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(2)(a) Legal tender in the correct amount must accompany the application.

(b) The certificate of registration fee includes a nonrefundable handling fee.

(c) Upon request, applicable fees may be waived for wildlife rehabilitation, educational or scientific activities, or for state or federal agencies if, in the opinion of the division, the activity will significantly benefit the division, wildlife, or wildlife management.

R657-3-13. Retroactive Effect on Possession.

A person lawfully possessing an animal prior to the effective date of any species reclassification may receive a certificate of registration from the division for the continued possession of that animal where the animal's species classification has changed hereunder from noncontrolled to controlled or prohibited. The certificate of registration shall be obtained within six months of the reclassification. If a certificate of registration is not obtained possession of the animal thereafter shall be unlawful.

R657-3-14. Issuance Criteria.

(1) The following factors shall be considered before the division may issue or renew a certificate of registration for the collection, importation, transportation, possession or propagation of an animal:

- (a) the health, welfare, and safety of the public;
- (b) the health, welfare, safety, and genetic integrity of wildlife, domestic livestock, poultry, and other animals;
- (c) ecological and environmental impacts;
- (d) the suitability of the applicant's holding facilities;
- (e) the experience of the applicant for the activity requested; and
- (f) ecological or environmental impact on other states.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance or renewal of a certificate of registration for a scientific use of an animal;

- (a) the validity of the objectives and design;
- (b) the likelihood the project will fulfill the stated objectives;

(c) the applicant's qualifications to conduct the research, including education or experience;

(d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the animal, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance or renewal of a certificate of registration for an educational use of an animal:

(a) the objectives and structure of the educational program; and

(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility; and

(c) whether the individual is in possession of the required federal permits.

(4) The division may deny issuing or renewing a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, proclamation or guidebook, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of collecting, importing, possessing or propagating an animal bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board;

(c) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(d) holding the animal at the proposed location violates federal, state, or local laws.

(5) The collection or importation and subsequent possession of an animal may be granted only upon a clear demonstration that the criteria established in this section have been met by the applicant.

(6) The division, in making a determination under this section, may consider any available facts or information that is relevant to the issuance or renewal of the certificate of registration, including independent inquiry or investigation to verify information or substantiate the qualifications asserted by the applicant.

(7) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

(8) An appeal of the denial of an application may be made as provided in Section R657-3-37.

R657-3-15. Amendment to Certificate of Registration.

(1)(a) If circumstances materially change, requiring a modification of the terms of the certificate of registration, the holder may request an amendment by submitting written justification and supporting information.

(b) The division may amend the certificate of registration or deny the request based on the criteria for initial and renewal applications provided in Section R657-3-14, and, if the request for an amendment is denied, shall provide the applicant with written notice of the reasons for denial.

(c) The division may charge a fee for amending the certificate of registration.

(d) An appeal of a request for an amendment may be made as provided in Section R657-3-37.

(2) The division reserves the right to amend any certificate of registration for good cause upon notification to the holder and written findings of necessity.

(3)(a) Each holder of a certificate of registration shall notify the division within 30 days of any change in mailing address.

(b) Animals or activities authorized by a certificate of registration may not be held at any location not specified on the certificate of registration without prior written permission from the division.

R657-3-16. Records and Reports.

(1)(a) From the date of issuance or renewal of the certificate of registration, the holder shall maintain complete and accurate records of any taking, possession, transportation, propagation, sale, purchase, barter, or importation authorized pursuant to this rule or the certificate of registration.

(b) Records must be kept current and shall include the names, phone numbers, and addresses of persons to whom any animal has been sold, bartered, or otherwise transferred or received, and the dates of the transactions.

(c) The records required under this section must be maintained for two years from the expiration date of the certificate of registration.

(2) Reports of activity must be submitted to the Wildlife Registration Office as specified on the certificate of registration.

(3) Failure to submit the appropriate records and reports may result in denial or suspension of a certificate of registration.

R657-3-17. Collection, Importation or Possession for Personal Use.

(1) A person may collect, import or possess live or dead animals or their parts for a personal use only as follows:

(a) Certificates of registration are not issued for the collection, importation or possession of any live or dead animals or their parts classified as prohibited, except as provided in R657-3-36 or the rules and guidebooks of the Wildlife Board.

(b) A certificate of registration is required for collecting, importing or possessing any live or dead animals or their parts classified as controlled, except as otherwise provided by this rule or the rules and guidebooks of the Wildlife Board.

(c) A certificate of registration is not required for collecting, importing or possessing live or dead animals or their parts classified as noncontrolled.

(2) Notwithstanding Subsection (1), a person may import or possess any dead animal or its parts, except as provided in Section R657-3-8, for personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag, certificate of registration, bill of sale, or invoice is available for inspection upon request.

R657-3-18. Collection, Importation or Possession of a Live Animal for a Commercial Use.

(1)(a) A person may not collect or possess a live animal for a commercial use or commercial venture for financial gain, unless otherwise provided in the rules and proclamations of the Wildlife Board.

(b) Use of brine shrimp for culturing ornamental aquatic animal species is not a commercial use if the brine shrimp eggs or cysts are not sold, bartered, or traded and no more than 200 pounds are collected annually.

(2)(a) A person may import or possess a live animal or parts thereof classified as non-controlled for a commercial use or a commercial venture, except native or naturalized species of animals may not be sold or traded unless they originate from a captive-bred population.

(b) Complete and accurate records for native or naturalized species must be maintained and available for inspection for two years from the date of transaction, documenting the date, name, phone number, and address of the person from whom the animal has been obtained.

(3)(a) A person may not import, collect or possess a live animal classified as controlled for a commercial use or commercial venture, without first obtaining a certificate of registration.

(b) A certificate of registration will not be issued to sell or trade a native or naturalized species of animal classified as controlled unless it originates from a captive-bred population.

(c) It is unlawful to transfer a live animal classified as controlled to a person who does not have a certificate of registration to possess the animal.

(d) Complete and accurate records must be maintained and available for inspection for two years from the date of transaction, documenting the date, name, phone number, and address of the person from whom the animal has been obtained.

(e) Complete and accurate records must be maintained and available for inspection for two years from the date of transfer, documenting the date, name, address and certificate of registration number of the person receiving the animal.

(4)(a) A certificate of registration will not be issued for importing or possessing a live animal classified as prohibited for a commercial use or commercial venture, except as provided in Subsection (b) or R657-3-36.

(b) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, aquarium, or film company to import, collect or possess live species of animals classified as prohibited if, in the opinion of the division, the importation for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(c) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, aquarium, aviary or film company under this Subsection is restricted to those facilities that keep the prohibited species of animals in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition, viewing, or filming.

(5) An entry permit, and a certificate of veterinary inspection are required by the Department of Agriculture to import a live animal classified as noncontrolled, controlled or prohibited.

R657-3-19. Collection, Importation or Possession of Dead Animals or Their Parts for a Commercial Use.

(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect, import or possess any dead animal or its parts for a commercial use or commercial venture for financial gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.

(2) The restrictions in Subsection (1) do not apply to the

following:

- (a) the commercial use of a dead coyote, jackrabbit, muskrat, raccoon, or its parts;
- (b) a business entity that has obtained a certificate of registration from the division to conduct nuisance wildlife control or carcass removal; and
- (c) dead animals sold or traded for educational use.

R657-3-20. Collection, Importation or Possession for Scientific or Educational Use.

(1) A person may collect, import or possess live or dead animals or their parts for a scientific or educational use only as follows:

(a) Certificates of registration are not issued for collecting, importing or possessing live or dead animals classified as prohibited, except as provided in Subsection (b), or R657-3-36.

(b) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit institution, or a person involved in wildlife research to collect, import or possess live or dead animals classified as prohibited if, in the opinion of the division, the scientific or educational use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(2) A person shall obtain a certificate of registration before collecting, importing or possessing live or dead animals or their parts classified as controlled.

(3) A certificate of registration is not required to collect, import or possess live or dead animals classified as noncontrolled.

R657-3-21. Classification and Specific Rules for Birds.

(1) The following birds are classified as noncontrolled for collection, importation and possession:

- (a) Penguins, family Spheniscidae, (All species);
- (b) Megapodes (Mound-builders), family Megapodiidae (All species);
- (c) Coturnix quail, family Phasianidae (Coturnix spp.);
- (d) Buttonquails, family Turnicidae (All species);
- (e) Turacos (including Plantain eaters and Go-away-birds), family Musophagidae (All species);
- (f) Pigeons and Doves, family Columbidae (All species not native to North America);
- (g) Parrots, family Psittacidae (All species not native to North America);
- (h) Rollers, family Coraciidae (All species);
- (i) Motmots, family Momotidae (All species);
- (j) Hornbills, family Bucerotidae (All species);
- (k) Barbets, families Capitonidae and Rhamphastidae (Capitoninae) (All species not native to North America);
- (l) Toucans, families Ramphastidae and Rhamphastidae (Ramphastinae) (All species not native to North America);
- (m) Broadbills, family Eurylaimidae (All species);
- (n) Cotingas, family Cotingidae (All species);
- (o) Honeyeaters, Meliphagidae Family (All species);
- (p) Leafbirds and Fairy-bluebirds, family Irenidae (Irena spp., Chloropsis spp., and Aegithina spp.);
- (q) Babblers, family Timaliidae (All species);
- (r) White-eyes, family Zosteropidae (All species);
- (s) Sunbirds, family Nectariniidae (All species);
- (t) Sugarbirds, family Promeropidae (All species)
- (u) Weaver finches, family Ploceidae (All species);
- (v) Estrildid finches (Waxbills, Mannikins, and Munias) family Estrildidae, (Estrildidae) (Estrildinae) (All species); and
- (w) Vidua finches (Indigobirds and Whydahs) family Viduidae, Estrildidae (Viduinæ) (All species);
- (x) Finches and Canaries, family Fringillidae (All species not native to North America);
- (y) Tanagers (including Swallow-tanager), family Thraupidae (All species not native to North America); and

(z) Icterids (Troupials, Blackbirds, Orioles, etc.), family Icteridae (All species not native to North America, except Central and South American Cowbirds).

(2) The following birds are classified as noncontrolled for collection and possession, and controlled for importation:

- (a) Cowbirds (Molothrus spp.) family Icteridae;
- (b) European Starling, family Sturnidae (Sturnus vulgaris);
- (c) House (English) Sparrow, family Passeridae (Passer domesticus); and
- (d) Domestic Pigeon (Rock Dove) (Columba livia) family Columbidae.

(3) The following birds are classified as prohibited for collection, importation and possession:

(a) Ocellated turkey, family Phasianidae, (Meleagris ocellata).

(4) All species and subspecies of birds and their parts, including feathers, not listed in Subsection (1) through Subsection (3):

(a) and not listed in Appendix I or II of CITES are classified as prohibited for collection and controlled for importation and possession;

(b) and listed in Appendix I of CITES are classified as prohibited for collection and importation and controlled for possession;

(c) and listed in Appendix II of CITES are classified as prohibited for collection and controlled for importation and possession.

(d) destruction of resident Canada goose eggs and nests is allowed provided the landowner complies with R657-3-8(3).

(5) Destruction of resident Canada goose eggs and nests is allowed provided the landowner complies with R657-3-8(3).

R657-3-22. Classification and Specific Rules for Crustaceans and Mollusks.

(1) Crustaceans are classified as follows:

(a) Asiatic (Mitten) Crab, family Grapsidae (Eriocheir, All species) are prohibited for collection, importation and possession;

(b) Brine shrimp, family Mysidae (All species) are classified as controlled for collection, and noncontrolled for importation and possession;

(c) Crayfish, families Astacidae, Cambaridae and Parastacidae (All species except Cherax quadricarinatus) are prohibited for collection, importation and possession;

(d) Pilose crayfish, (Pacifastacus gambelii) is prohibited for collection, importation, and possession;

(e) Daphnia, family Daphniidae (Daphnia lumholtzi) is prohibited for collection, importation and possession;

(f) Fishhook water flea, family Cercopagidae (Cercopagis pengoi) is prohibited for collection, importation and possession; and

(g) Spiny water flea, family Cercopagidae (Bythotrephes cederstroemii) is prohibited for collection, importation and possession.

(h) Stygobromus utahensis, family Crangonnyctidae is prohibited for collection, importation and possession.

(2) Mollusks are classified as follows:

(a) Family Achatinidae (All species) is prohibited for collection, importation and possession;

(b) Brian Head mountainsnail, family Oreohelicidae (Oreohelix parawanensis) is controlled for collection, importation and possession;

(c) Dark falsemussel, (Mytilopsis leucophaeta) family Dreissenidae is controlled for collection, importation and possession;

(d) Deseret mountainsnail, family Oreohelicidae (Oreohelixperipherica) is controlled for collection, importation and possession;

(e) Desert springsnail, (Pyrgulopsis deserta) family

Hydrobiidae is controlled for collection, importation and possession;

(f) Desert valvata, (*Valvata utahensis*) family Valvatidae is prohibited for collection, importation and possession;

(g) Eureka mountainsnail, (*Oreohelix eurekaensis*) family Oreohelicidae is controlled for collection, importation and possession;

(h) Fat-whorled pondsnail, (*Stagnicola bonnevillensis*) family Lymnaeidae is controlled for collection, importation and possession;

(i) Fish Lake physa, (*Physella microstriata*) family Physidae is controlled for collection, importation and possession;

(j) Fish Springs marshsnail, (*Stagnicola pilsbryi*) family Lymnaeidae is prohibited for collection, importation and possession;

(k) Floater, (*Anodonta* spp. All species) family Anodontidae is controlled for collection, importation and possession;

(l) Glossy valvata, (*Valvata humeralis*) family Valvatidae is controlled for collection, importation and possession;

(m) Kanab ambersnail, (*Oxyloma kanabense*) family Succineidae is prohibited for collection, importation and possession;

(n) Lyrate mountainsnail, (*Oreohelix haydeni*) family Oreohelicidae is controlled for collection, importation and possession;

(o) New Zealand mudsnail, (*Potamopyrgus antipodarum*) family Hydrobiidae is prohibited for collection, importation and possession;

(p) Quagga mussel, (*Dreissena bugenses*) family Dreissenidae is prohibited for collection, importation and possession;

(q) Red-rimmed melania, (*Melanoides tuberculatus*) family Thiariidae is prohibited for collection, importation and possession;

(r) Springsnails or pyrgs (*Prygulopsis* spp., All species) family Hydrobiidae are controlled for collection, importation and possession.

(s) Southern tightcoil, (*Ogaridiscus subrupicola*) family Zonitidae is controlled for collection, importation and possession;

(t) Spruce snail, (*Microphysula ingersolli*) family Thysanophoridae is controlled for collection, importation and possession;

(u) Thickshell pondsnail, (*Stagnicola utahensis*) family Lymnaeidae is prohibited for collection, importation and possession;

(v) Utah physa, (*Physella utahensis*) family Physidae is controlled for collection, importation and possession;

(w) Western pearlshell, (*Margaritifera falcata*) family Margaritiferidae is prohibited for collection, importation and possession;

(x) Wet-rock physa, (*Physella zionis*) family Physidae is controlled for collection, importation and possession;

(y) Yavapai mountainsnail, (*Oreohelix yavapai*) family Oreohelicidae is controlled for collection, importation and possession; and

(z) Zebra mussel, (*Dreissena polymorpha*) family Dreissenidae is prohibited for collection, importation and possession.

(3) All native species and subspecies of crustaceans and mollusks not listed in Subsection (1) and (2), excluding ornamental aquatic animal species, are classified as controlled for collection, importation and possession.

(4) All nonnative species and subspecies of crustaceans and mollusks not listed in Subsection (1) and (2), excluding ornamental aquatic animal species, are classified as prohibited for collection, importation and possession.

R657-3-23. Classification and Specific Rules for Fish.

(1) All species of fish listed in Subsections (2) through (30) are classified as prohibited for collection, importation and possession, except:

(a) Koi, (*Cyprinus carpio*) family Cyprinidae is prohibited for collection, and noncontrolled for importation and possession;

(b) all species and subspecies of ornamental aquatic animal species not listed in Subsections (2) through (30) are classified as prohibited for collection, and noncontrolled for importation and possession; and

(c) all native and nonnative species and subspecies of fish that are not ornamental aquatic animal species and not listed in Subsections (2) through (30) are classified as prohibited for collection, and controlled for importation and possession.

(2) Carp, including hybrids, family Cyprinidae (All species, except Koi).

(3) Catfish:

(a) Blue catfish, (*Ictalurus furcatus*) family Ictaluridae;

(b) Flathead catfish, (*Pylodictus olivaris*) family Ictaluridae;

(c) Giant walking catfish (airsac), family Heteropneustidae (All species);

(d) Labyrinth catfish (walking), family Clariidae (All species); and

(e) Parasitic catfish (candiru, carnero) family Trichomycteridae (All species).

(4) Herring:

(a) Alewife, (*Alosa pseudoharengus*) family Clupeidae; and

(b) Gizzard shad, (*Dorosoma cepedianum*) family Clupeidae.

(5) Killifish, family Fundulidae (All species).

(6) Pike killifish, (*Belonesox belizanus*) family Poeciliidae.

(7) Minnows:

(a) Bonytail, (*Gila elegans*) family Cyprinidae;

(b) Colorado pikeminnow, (*Ptychocheilus lucius*) family Cyprinidae;

(c) Creek chub, (*Semotilus atromaculatus*) family Cyprinidae;

(d) Emerald shiner, (*Notropis atherinoides*) family Cyprinidae;

(e) Humpback chub, (*Gila cypha*) family Cyprinidae;

(f) Least chub, (*Iotichthys phlegethontis*) family Cyprinidae;

(g) Northern leatherside chub, (*Lepidomeda copei*) family Cyprinidae;

(h) Red shiner, (*Cyprinella lutrensis*) family Cyprinidae;

(i) Redside shiner, (*Richardsonius balteatus*) family Cyprinidae;

(j) Roundtail chub, (*Gila robusta*) family Cyprinidae;

(k) Sand shiner, (*Notropis stramineus*) family Cyprinidae;

(l) Southern leatherside chub, (*Lepidomeda aliciae*) family Cyprinidae;

(m) Utah chub, (*Gila atraria*) family Cyprinidae;

(n) Virgin River chub, (*Gila seminuda*) family Cyprinidae; and

(o) Virgin spinedace, Cyprinidae Family (*Lepidomeda mollispinis*).

(p) Woundfin, (*Plagopterus argentissimus*) family Cyprinidae.

(8) Burbot, (*Lota lota*) family Lotidae.

(9) Suckers:

(a) Bluehead sucker, (*Catostomus discobolus*) family Catostomidae;

(b) Desert sucker, (*Catostomus clarki*) family Catostomidae;

(c) Flannelmouth sucker, (*Catostomus latipinnis*) family

Catostomidae;

(d) June sucker, (*Chasmistes liorus*) family Catostomidae;(e) Razorback sucker, (*Xyrauchen texanus*) family

Catostomidae;

(f) Utah sucker, (*Catostomus ardens*) family Catostomidae;

and

(g) White sucker, (*Catostomus commersoni*) family

Catostomidae.

(10) White perch, (*Morone americana*) family Moronidae.(11) Cutthroat trout, (*Oncorhynchus clarki*) (All subspecies) family Salmonidae.

(12) Bowfin, (All species) family Amiidae.

(13) Bull shark, (*Carcharhinus leucas*) family

Carcharhinidae.

(14) Drum (All freshwater species), family Sciaenidae.

(15) Gar, (All species) family Lepidosteidae

(16) Jaguar guapote, (*Cichlasoma managuense*) family

Cichlidae.

(17) Lamprey, (All species) family Petromyzontidae.

(18) Mexican tetra, (*Astyanax mexicanus*, except blind form) family Characidae.

(19) Mooneye, (All species) family Hiodontidae.

(20) Nile perch, (*Lates, lucioides*) (All species) family

Centropomidae.

(21) Northern pike, (*Esox lucius*) family Esocidae.(22) Piranha, (*Serrasalmus*, All species) family

Characidae.

(23) Round goby, (*Neogobius melanostomus*) family

Gobiidae.

(24) Ruffe, (*Gymnocephalus cernuus*) family Percidae.

(25) Snakehead, (All species) family Channidae.

(26) Stickleback, (All species) family Gasterosteidae.

(27) Stingray (All freshwater species) family Dasyatidae.

(28) Swamp eel, (All species) family Synbranchidae.

(29) Tiger fish or guavinus, (*Hoplias malabaricus*) family

Erythrinidae.

(30) Tilapia, (*Tilapia* and *Sarotherodon*) (All species) family Cichlidae.**R657-3-24. Classification and Specific Rules for Mammals.**

(1) Mammals are classified as follows:

(a) Monotremes (platypus and spiny anteaters), (All species) families Ornithorhynchidae and Tachyglossidae are prohibited for collection, and controlled for importation and possession;

(b) Marsupials are classified as follows:

(i) Virginia opossum, (*Didelphis virginiana*) family Didelphidae is noncontrolled for collection, prohibited for importation and controlled for possession;

(ii) Wallabies, wallaroos and kangaroos, (All species) family Macropodidae are prohibited for collection, importation and possession;

(c) Bats and flying foxes (All families, All species) (order Chiroptera), are prohibited for collection, importation and possession;

(d) Insectivores (all groups, All species) are controlled for collection, importation and possession;

(e) Hedgehogs and tenrecs, families Erinaceidae and Tenrecidae except white bellied hedgehogs are controlled for collection, importation and possession;

(f) Shrews, (*Sorex* spp. and *Notisorex* spp.) family Soricidae are controlled for collection, importation and possession;

(g) Anteaters, sloths and armadillos (All families, All species) (order Xenartha), are prohibited for collection, and controlled for importation and possession;

(h) Aardvark (*Orycteropus afer*) family Orycteropodidae is prohibited for collection, and controlled for importation and possession;(i) Pangolins or scaly anteaters (*Manis* spp.) (order

Philodota) are prohibited for collection and importation, and controlled for possession;

(j) Tree shrews (All species) family Tupalidae are prohibited for collection, and controlled for importation and possession;

(k) Lagomorphs (rabbits, hares and pikas) are classified as follows:

(i) Jackrabbits, (*Lepus* spp.) family Leporidae are noncontrolled for collection, and controlled for importation and possession;(ii) Cottontails, (*Sylvilagus* spp.) family Leporidae are prohibited for collection, and controlled for importation and possession;(iii) Pygmy rabbit, (*Brachylagus idahoensis*) family Leporidae is prohibited for collection, and controlled for importation and possession;(iv) Snowshoe hare, (*Lepus americanus*) family Leporidae is prohibited for collection, and controlled for importation and possession;(v) Pika, (*Ochotona princeps*) family Ochotonidae is controlled for collection, importation and possession;

(l) Elephant shrews (All species) family Macroscelididae are prohibited for collection, and controlled for importation and possession;

(m) Rodents (order Rodentia) are classified as follows:

(i) Beaver, (*Castor canadensis*) family Castoridae is controlled for collection, importation and possession;(ii) Muskrat, (*Ondatra zibethicus*) family Muridae are noncontrolled for collection, and controlled for importation and possession;(iii) Deer mice and related species, (*Peromyscus* spp.) family Muridae are controlled for collection, importation and possession;(iv) Grasshopper mice, (*Onychomys* spp.) family Muridae are controlled for collection, importation and possession;

(v) Voles (All genera and species), family Muridae, subfamily Microtinae are controlled for collection, importation and possession;

(vi) Western harvest mouse, (*Reithrodontomys megalotis*) family Muridae is controlled for collection, importation and possession;(vii) Woodrats, (*Neotoma* spp.) family Muridae are controlled for collection, importation and possession;(viii) Nutria or coypu, (*Myocastor coypus*) family Myocastoridae is noncontrolled for collection, prohibited for importation and controlled for possession;(ix) Pocket gophers (All species, except the Idaho pocket gopher (*Thomomys idahoensis*)) family Geomyidae are noncontrolled for collection, and controlled for importation and possession;(x) Pocket mice, (*Perognathus* spp. and *Chaetodipus intermedius*) family Heteromyidae are controlled for collection, importation and possession;(xi) Dark kangaroo mouse, (*Microdipodops pallidus*) family Heteromyidae is controlled for collection, importation and possession;(xii) Kangaroo rats, (*Dipodomys* spp.) family Heteromyidae are controlled for collection, importation and possession;(xiii) Abert's squirrel, (*Sciurus aberti*) family Sciuridae is prohibited for collection, importation and possession;(xiv) Black-tailed prairie dog, (*Cynomys ludovicianus*) family Sciuridae is controlled for collection, and prohibited for importation and possession;(xv) Gunnison's prairie dog, (*Cynomys gunnisoni*) family Sciuridae is controlled for collection, importation and possession;(xvi) Utah prairie dog, (*Cynomys parvidens*) family Sciuridae is prohibited for collection, importation and

possession;

(xvii) White-tailed prairie dog, (*Cynomys leucurus*) family Sciuridae is controlled for collection, importation and possession;

(xviii) Chipmunks, All species except yellow-pine chipmunk (*Neotamias amoenus*) family Sciuridae are noncontrolled for collection, and controlled for importation and possession;

(xix) Yellow-pine chipmunk, (*neotamias amoenus*) family Sciuridae is controlled for collection, importation and possession;

(xx) Northern flying squirrel, (*Glaucomys sabrinus*) family Sciuridae is controlled for collection, importation and possession;

(xxi) Southern flying squirrel, (*Glaucomys volans*) family Sciuridae is prohibited for collection, importation and possession;

(xxii) Fox squirrel or eastern fox squirrel (*Sciurus niger*) family Sciuridae is prohibited for collection, importation, and possession;

(xxiii) Ground squirrel and rock squirrel, and antelope squirrels (All species, All genera), family Sciuridae are controlled for collection, importation and possession, except nuisance squirrels which are noncontrolled for collection;

(xxiv) Red squirrel, (*Tamiasciurus hudsonicus*) family Sciuridae are controlled for collection, importation and possession, except for nuisance animals, which are noncontrolled for collection;

(xxv) Yellow-bellied marmot, (*Marmota flaviventris*) family Sciuridae is controlled for collection, importation and possession;

(xxvi) Western jumping mouse, (*Zapus princeps*) family Zapodidae is controlled for collection, importation and possession;

(xxvii) Porcupine, (*Erethizon dorsatum*) family Erethizontidae is controlled for collection, importation and possession;

(xxviii) Degus and other South American rodents, family Octodontidae (All species) are prohibited for collection, importation and possession;

(xxvix) Dormice, families Gliridae and Selevinidae (All species) are prohibited for collection, importation and possession;

(xxx) African pouched rats, family Muridae (All species) are prohibited for collection, importation and possession;

(xxxix) Jirds, (*Meriones* spp.) family Muridae are prohibited for collection, importation and possession;

(xxxix) Mice, (All species of *Mus*) family Muridae, except *Mus musculus* are prohibited for collection, importation and possession;

(xxxix) Spiny mice, (*Acomys* spp.) family Muridae are prohibited for collection, importation and possession;

(xxxix) Hyraxes (All species) family Procaviidae are prohibited for collection, and controlled for importation and possession;

(xxxix) Idaho pocket gopher, (*Thomomys idahoensis*) family Geomyidae is controlled for collection, importation and possession.

(n) Hoofed mammals (*Artiodactyla* and *Perissodactyla*) are classified as follows:

(i) American bison or "buffalo" wild and free ranging, (*Bos bison*) family Bovidae is prohibited for collection, importation and possession;

(ii) Collared peccary or javelina, (*Tayassu tajacu*) family Tayassuidae is prohibited for collection, importation and possession;

(iii) Axis deer, (*Cervus axis*) family Cervidae is prohibited for collection, importation and possession;

(iv) Caribou, wild and free ranging, (*Rangifer tarandus*)

family Cervidae is prohibited for collection, importation and possession;

(v) Caribou, captive-bred, (*Rangifer tarandus*) family Cervidae is prohibited for collection, and controlled for importation and possession;

(vi) Elk or red deer (*Cervus elaphus*), wild and free ranging, family Cervidae is prohibited for collection, importation and possession;

(vii) Fallow deer, (*Cervus dama*), wild and free ranging, family Cervidae is prohibited for collection, importation and possession;

(viii) Fallow deer, (*Cervus dama*) captive-bred, family Cervidae is prohibited for collection, and controlled for importation and possession;

(ix) Moose, (*Alces alces*) family Cervidae is prohibited for collection, importation and possession;

(x) Mule deer, (*Odocoileus hemionus*) family Cervidae is prohibited for collection, importation and possession;

(xi) White-tailed deer (*Odocoileus virginianus*), family Cervidae is prohibited for collection, importation and possession;

(xii) Rusa deer, (*Cervus timorensis*) family Cervidae is prohibited for collection, importation and possession;

(xiii) Sambar deer, (*Cervus unicolor*) family Cervidae is prohibited for collection, importation and possession;

(xiv) Sika deer, (*Cervus nippon*) family Cervidae is prohibited for collection, importation and possession;

(xv) Muskox, (*Ovibos moschatus*), wild and free ranging, family Bovidae is prohibited for collection, importation and possession;

(xvi) Muskox, (*Ovibos moschatus*), captive-bred, family Bovidae is prohibited for collection, and controlled for importation and possession;

(xvii) Pronghorn, (*Antilocapra americana*) family Antilocapridae is prohibited for collection, importation and possession;

(xviii) Barbary sheep or aoudad, (*Ammotragus lervia*) family Bovidae is prohibited for collection, importation and possession;

(xix) Bighorn sheep (*Ovis canadensis*) (including hybrids) family Bovidae are prohibited for collection, importation and possession;

(xx) Dall's and Stone's sheep (*Ovis dalli*) (including hybrids) family Bovidae are prohibited for collection, importation and possession;

(xxi) Exotic wild sheep (including mouflon, *Ovis musimon*; Asiatic or red sheep, *Ovis orientalis*; urial, *Ovis vignei*; argali, *Ovis ammon*; and snow sheep, *Ovis nivicola*), including hybrids, family Bovidae are prohibited for collection, importation and possession;

(xxii) Rocky Mountain goat, (*Oreamnos americanus*) family Bovidae is prohibited for collection, importation and possession;

(xxiii) Ibex, (*Capra ibex*) family Bovidae is prohibited for collection, importation and possession;

(xxiv) Wild boar or pig (*Sus scrofa*), including hybrids, are prohibited for collection, importation and possession;

(o) Carnivores (*Carnivora*) are classified as follows:

(i) Bears, (All species) family Ursidae are prohibited for collection, importation and possession;

(ii) Coyote, (*Canis latrans*) family Canidae is prohibited for importation, and is controlled by the Utah Department of Agriculture for collection and possession;

(iii) Fennec, (*Vulpes zerda*) family Canidae is prohibited for collection, importation and possession;

(iv) Gray fox, (*Urocyon cinereoargenteus*) family Canidae is prohibited for collection, importation and possession;

(v) Kit fox, (*Vulpes macotis*) family Canidae is prohibited for collection, importation and possession;

(vi) Red fox, (*Vulpes vulpes*) family Canidae, as applied to animals in the wild or taken from the wild, is noncontrolled for lethal take and prohibited for live collection, possession, or importation;

(vii) Gray wolf, (*Canis lupus*) except hybrids with domestic dogs, family Canidae is prohibited for collection, importation and possession;

(viii) Wild Cats (All species, including hybrids) family Felidae are prohibited for collection, importation, and possession;

(ix) Bobcat, (*Lynx rufus*) wild and free ranging, family Felidae is prohibited for collection, importation and possession;

(x) Bobcat, (*Lynx rufus*) captive-bred, family Felidae is prohibited for collection, and controlled for importation and possession;

(xi) Cougar, puma or mountain lion, (*Puma concolor*) family Felidae is prohibited for collection, importation and possession;

(xii) Canada lynx, (*Lynx lynx*) wild and free ranging, family Felidae is prohibited for collection, importation and possession;

(xiii) Eurasian lynx, (*Lynx lynx*) captive-bred, family Felidae is prohibited for collection, and controlled for importation and possession;

(xiv) American badger, (*Taxidea taxus*) family Mustelidae is prohibited for collection, importation and possession;

(xv) Black-footed ferret, (*Mustela nigripes*) family Mustelidae is prohibited for collection, importation or possession;

(xvi) Ermine, stout, or short-tailed weasel, (*Mustela erminea*) family Mustelidae is prohibited for collection, importation and possession;

(xvii) Long-tailed weasel (*Mustela frenata*) family Mustelidae is prohibited for collection, importation and possession;

(xviii) American marten, (*Martes americana*) wild and free ranging, family Mustelidae is prohibited for collection, importation and possession;

(xix) American marten, (*Martes americana*) captive-bred, family Mustelidae is prohibited for collection, controlled for importation and possession;

(xx) American mink, (*Neovison vison*) except domestic forms, family Mustelidae is prohibited for collection, importation and possession;

(xxi) Northern river otter, (*Lontra canadensis*) family Mustelidae is prohibited for collection, importation and possession;

(xxii) Striped skunk, (*Mephitis mephitis*) family Mephitidae is prohibited for collection, importation, and possession, except nuisance skinks, which are noncontrolled for collection;

(xxiii) Western spotted skunk, (*Spilogale gracilis*) family Mephitidae is prohibited for collection, importation, and possession;

(xxiv) Wolverine, (*Gulo gulo*) family Mustelidae is prohibited for collection, importation and possession;

(xxv) Coatis, (*Nasua* spp. and *Nasuella* spp.) family Procyonidae are prohibited for collection, importation and possession;

(xxvi) Kinkajou, (*Potos flavus*) family Procyonidae is prohibited for collection, importation and possession;

(xxvii) Northern Raccoon, (*Procyon lotor*) family Procyonidae is prohibited for importation, and controlled by the Department of Agriculture for collection and possession;

(xxviii) Ringtail, (*Bassariscus astutus*) family Procyonidae is prohibited for collection, importation and possession;

(xxix) Civets, genets and related forms, (All species) family Viverridae are prohibited for collection, importation and possession;

(p) Primates are classified as follows:

(i) Lemurs, (All species) family Lemuridae are prohibited for collection, importation and possession;

(ii) Dwarf and mouse lemurs, (All species) family Cheirogaleidae are prohibited for collection, importation and possession;

(iii) Indri and sifakas, (All species) family Indriidae are prohibited for collection, importation and possession;

(iv) Aye aye, (*Daubentonia madagascensis*) family Daubentonidae is prohibited for collection, importation and possession;

(v) Bush babies, pottos and lorises, (All species) family Lorisidae are prohibited for collection, importation and possession;

(vi) Tarsiers, (All species) family Tarsiidae are prohibited for collection, importation and possession;

(vii) New World monkeys, (All species) family Cebidae are prohibited for collection, importation and possession;

(viii) Marmosets and tamarins, (All species) family Callitrichidae are prohibited for collection, importation and possession;

(ix) Old-world monkeys, (All species) which includes baboons and macaques, family Cercopithecidae are prohibited for collection, importation and possession;

(x) Great apes (All species), which include gorillas, chimpanzees and orangutans, family Hominidae are prohibited for collection, importation and possession;

(xi) Lesser apes (Siamang and gibbons, All species), family Hylobatidae are prohibited for collection, importation and possession;

(2) All species and subspecies of mammals and their parts, not listed in Subsection (1):

(a) and not listed in Appendix I or II of CITES are classified as prohibited for collection and controlled for importation and possession;

(b) and listed in Appendix I of CITES are classified as prohibited for collection and importation and controlled for possession;

(c) and listed in Appendix II of CITES are classified as prohibited for collection and controlled for importation and possession.

R657-3-25. Importation of Animals into Utah.

(1) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number before any animal may be imported into Utah.

(2)(a) All live fish imported into Utah and not destined for an aquaculture facility or fee fishing facility must be accompanied by the following documentation:

(i) common or scientific names of fish;

(ii) name and address of the consignor and consignee;

(iii) origin of shipment;

(iv) final destination;

(v) number of fish shipped; and

(vi) certificate of veterinary inspection, Utah entry permit number issued by the Utah Department of Agriculture and Food, and any other health certifications.

(b) A person may import live fish destined for an aquaculture facility or fee fishing facility only as provided by Title 4, Chapter 37, Aquaculture Act and the rules promulgated there under.

(3) Subsection (2)(a) does not apply to dead fish or crayfish caught in Lake Powell, Bear Lake, or Flaming Gorge reservoirs under the authority of a valid fishing license and in accordance with Rule R657-13 and the proclamation of the Wildlife Board for taking fish and crayfish.

R657-3-26. Transporting Live Animals Through Utah.

(1) Any controlled or prohibited species of animal may be transported through Utah without a certificate of registration if:

- (a) the animal remains in Utah no more than 72 hours; and
- (b) the animal is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah; and
- (c) the animal is a raptor used for falconry purposes in compliance with the requirements in R657-20.

(2) A certificate of veterinary inspection is required from the state of origin as provided in Rule R58-1 and proof of legal possession must accompany the animal.

(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.

(4) None of the provisions in this section will be construed to supersede R657-20-14 and R657-20-30.

R657-3-27. Importing Animals into Utah for Processing.

(1) A person shipping animals directly to a state or federally regulated establishment for immediate euthanasia and processing is not required to obtain a certificate of registration or certificate of veterinary inspection provided the animals or their parts are accompanied by a waybill or other proof of legal ownership describing the animals, their source, and indicating the destination.

(2) Any water used to hold or transport fish may not be emptied into a stream, lake, or other natural body of water.

R657-3-28. Transfer of Possession.

(1) A person may possess an animal classified as prohibited or controlled only after applying for and obtaining a certificate of registration from the division or Wildlife Board as provided in this rule.

(2) Any person who possesses an animal classified as prohibited or controlled may transfer possession of that animal only to a person who has first applied for and obtained a certificate of registration for that animal from the division or Wildlife Board.

(3) The division may issue a certificate of registration granting the transfer and possession of that animal only if the applicant meets the issuance criteria provided in Section R657-3-14.

(4) A certificate of registration does not provide the holder any rights of succession.

R657-3-29. Propagation.

(1) A person may propagate animals classified as noncontrolled for possession.

(2) A person may propagate animals classified as controlled for possession only after obtaining a certificate of registration from the division, or as otherwise authorized in Sections R657-3-30, R657-3-31, and R657-3-32.

(3) A person may not propagate animals classified as prohibited for possession, except as authorized in Sections R657-3-30, R657-3-31, R657-3-32, and R657-3-36.

R657-3-30. Propagation of Raptors.

(1) A person may propagate raptors only as provided in this section, R657-20-30, and 50 CFR 21.30, 2011 which are incorporated herein by reference. All applicants for captive breeding permits must become familiar with this rule and other applicable state and federal regulations.

(2) A person must apply for a federal raptor propagation permit and a certificate of registration from the division to propagate raptors.

(3) If the applicant requests authority to use raptors taken from the wild, the division's avian program coordinator must determine the following:

- (a) whether issuance of the permit would have significant effect on any wild population of raptors;

(b) the length of time the wild caught raptor has been in captivity;

(c) whether suitable captive stock is available; and

(d) whether wild stock is needed to enhance the genetic variability of captive stock; and

(e) whether a federal permit to use a wild caught raptor for propagation has been issued.

(4) Raptors may not be taken from the wild for captive breeding, except as provided in Subsection (3) and R657-20-30.

(5) A person must obtain authorization from the division before importing raptors or raptor semen into Utah. The authorization shall be noted on the certificate of registration.

(6) A person may sell a captive-bred raptor properly marked with a band approved by the U.S. Fish and Wildlife Service or issued by the U.S. Fish and Wildlife Service to a resident raptor breeder or falconer who has a valid Utah falconry certificate of registration or to a nonresident state and federally licensed apprentice, general or master class falconer or raptor breeder.

(7) A permittee may not purchase, sell or barter any raptor eggs, any raptors taken from the wild, any raptor semen collected from the wild, or any raptors hatched from eggs taken from the wild.

(8) A raptor imported into Utah is required to have:

(a) a certificate of veterinary inspection from the state, tribe, country or territory of origin; and

(b) an import authorization number issued through the Utah Department of Agriculture and Food.

(9) A permittee may use raptors held in possession for propagation in the sport of falconry only if such use is designated on both the permittee's propagation permit and the falconry certificate of registration.

(a) Formal approval from the division is required to transfer a raptor from a falconry certificate of registration to propagation use that exceeds 8 months in duration.

(b) A licensed raptor propagator may temporarily possess and use a falconry raptor for propagation without division approval, provided the propagator possesses;

(i) a signed and dated statement from the falconer authorizing the temporary possession; and

(ii) a copy of the falconer's original FWS Form 3-186A for that raptor.

(10) Raptors considered unsuitable for release to the wild from rehabilitation projects, and certified as not releasable by the rehabilitator and a licensed veterinarian, may be placed with a licensed propagator upon written request to the division from the licensed propagator that is endorsed by the rehabilitator and in concurrence with the U.S. Fish and Wildlife Service.

(11) A copy of the propagator's annual report of activities required by the U.S. Fish and Wildlife Service must be sent to the division as specified on the certificate of registration.

(12) None of the provisions in this section will be construed to supersede R657-20-30.

R657-3-31. Propagation of Bobcat, Lynx, and Marten.

(1)(a) A person may propagate captive-bred bobcat, lynx (Canada and/or Eurasian), or American marten only after obtaining a certificate of registration from the division.

(b) The certificate of registration must be renewed annually.

(c) Renewal of a certificate of registration will be subject to submission of a report indicating:

(i) the number of progeny produced;

(ii) the animal's disposition; and

(iii) a certificate of inspection by a licensed veterinarian verifying that the animals are maintained under healthy and nutritionally adequate conditions.

(2)(a) Any person engaged in propagation must keep at least one male and one female in possession.

(b) Live bobcat, lynx, and American marten may not be obtained from the wild for use in propagation.

(c) Bobcat, lynx, and American marten held for propagation shall not be maintained as pets and shall not be declawed or defanged.

(3) The progeny and descendants of any bobcat, lynx, or American marten may be pelted or sold.

(4)(a) If any bobcat, lynx, or American marten is sold live to a person residing in Utah, the purchaser must have first obtained a certificate of registration from the division and must show proof of this fact to the seller.

(b) The offense of selling or transferring a live bobcat, lynx, or American marten to a person who has not obtained a certificate of registration shall be punishable against both the transferor and the transferee.

(5)(a) Each pelt must have attached to it a permanent possession tag before being sold, bartered, traded, or transferred to another person.

(b) Permanent possession tags may be obtained at any regional division office and shall be affixed to the pelt by a division employee.

(6) The progeny of bobcat, lynx, or American marten may not be released to the wild.

(7) Nothing in this section shall be construed to allow a person holding a certificate of registration for propagation to use or possess a bobcat, lynx, or American marten for any purpose other than propagation without express authorization on the certificate of registration.

R657-3-32. Propagation of Caribou, Fallow Deer, Musk-ox, and Reindeer.

(1)(a) A person may propagate captive-bred caribou, fallow deer, musk-ox, or reindeer only after obtaining a certificate of registration from the division.

(b) The certificate of registration must be renewed annually.

(c) Renewal of a certificate of registration will be subject to submission of a report indicating:

(i) the disposition of each animal held in possession during the year; and

(ii) a certificate of inspection by a licensed veterinarian verifying that the animals are maintained under healthy and nutritionally adequate conditions.

(2)(a) If any live caribou, fallow deer, musk-ox, or reindeer is sold, traded, or given to another person as a gift in Utah, the purchaser must have first obtained a certificate of registration from the division and must show proof of this fact to the seller.

(b) The offense of selling or transferring a live caribou, fallow deer, musk-ox, or reindeer to a person who has not obtained a certificate of registration shall be punishable against both the transferor and the transferee.

(3) If, at any time, the division determines that the possession or propagation of caribou, fallow deer, musk-ox, or reindeer has a significantly detrimental effect to the health of any population of wildlife, the division may:

(a) terminate the authorization for propagation; and

(b) require the removal or destruction of the animals at the owner's expense.

R657-3-33. Violations.

(1) Any violation of this rule shall be punishable as provided in Section 23-13-11.

(2) Nothing in this rule shall be construed to supersede any provision of Title 23, of Utah Code which establishes a penalty greater than an infraction. Any provision of this rule which overlaps a provision of Title 23 is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

R657-3-34. Certification Review Committee.

(1) The division shall establish a Certification Review Committee which shall be responsible for:

(a) reviewing:

(i) petitions to reclassify species and subspecies of animals;

(ii) appeals of certificates of registration; and

(iii) requests for variances to this rule; and

(b) making recommendations to the Wildlife Board.

(2) The committee shall consist of the following individuals:

(a) the division director or the director's designee who shall represent the director's office and shall act as chair of the committee;

(b) the chief of the Aquatic Section;

(c) the chief of the Wildlife Section;

(d) the chief of the Public Services Section;

(e) the chief of the Law Enforcement Section;

(f) the state veterinarian or his designee; and

(g) a person designated by the Department of Health.

(3) The division shall require a fee for the submission of a request provided in Section R657-3-35 and R657-3-36.

R657-3-35. Request for Species Reclassification.

(1) A person may request to change the classification of a species or subspecies of animal provided in this rule.

(2) A request for reclassification must be made to the Certification Review Committee by submitting an application for reclassification.

(3)(a) The application shall include:

(i) the petitioner's name, address, and phone number;

(ii) the species or subspecies for which the application is made;

(iii) the name of all interested parties known by the petitioner;

(iv) the current classification of the species or subspecies;

(v) a statement of the facts and reasons forming the basis for the reclassification; and

(vi) copies of scientific literature or other evidence supporting the change in classification.

(b) In addition to the information required under Subsection (a), the applicant must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(3)(a) The committee shall, within a reasonable time, consider the request for reclassification and shall submit its recommendation to the Wildlife Board.

(b) The committee shall send a copy of its recommendation to the applicant and other interested parties specified on the application.

(4)(a) At the next available Wildlife Board meeting, the Wildlife Board shall:

(i) consider the committee recommendation; and

(ii) any information provided by the applicant or other interested parties.

(b) The Wildlife Board shall approve or deny the request for reclassification based on the issuance criteria provided in Section R657-3-14.

(5) A change in species classification shall be made in accordance with Title 63G, Chapter 3, Administrative Rulemaking Act.

R657-3-36. Request for Variance.

(1) A person may request a variance to this rule for the collection, importation, propagation, or possession of an animal classified as prohibited under this rule by submitting a variance request to the Certification Review Committee.

(2)(a) A variance request shall include the following:

(i) the name, address, and phone number of the person

making the request;

(ii) the species or subspecies of animal and associated activities for which the request is made; and

(iii) a statement of the facts and reasons forming the basis for the variance.

(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(3) The committee shall, within a reasonable time, consider the request and shall submit its recommendation to the Wildlife Board.

(4) At the next available Wildlife Board meeting the Wildlife Board shall:

(a) consider the committee recommendation; and

(b) any information provided by the person making the request.

(5)(a) The Wildlife Board shall approve or deny the request based on the issuance criteria provided in Section R657-3-14.

(b) If the request applies to a broad class of persons and not to the unique circumstances of the applicant, the Wildlife Board shall consider changing the species classification before issuing a variance to this rule.

(6)(a) If the request is approved, the Wildlife Board may impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.

(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request before its issuance.

R657-3-37. Appeal of Certificate of Registration Denial.

(1) A person may appeal the division's denial of a certificate of registration by submitting an appeal request to the Certification Review Committee.

(2) The request must be made within 30 days after the date of the denial.

(3) The request shall include:

(a) the name, address, and phone number of the applicant;

(b) the date the request is mailed;

(c) the species or subspecies of animals and the activity for which the application is made; and

(d) supporting facts and other evidence applicable to resolving the issue.

(4) The committee shall review the request within a reasonable time after it is received.

(5) Upon reviewing the application and the reasons for its denial, the committee may:

(a) overturn the denial and approve the application; or

(b) uphold the denial.

(6) The committee may overturn a denial if the denial is:

(a) based on insufficient information;

(b) inconsistent with prior actions of the division or the Wildlife Board;

(c) arbitrary or capricious; or

(d) contrary to law.

(7)(a) Within a reasonable time after making its decision, the committee shall mail a notice to the applicant specifying the reasons for its decision.

(b) The notice shall include information on the procedures for seeking Wildlife Board review of that decision.

(8)(a) If the committee upholds the denial, the applicant may seek Wildlife Board review of the decision by submitting a request for Wildlife Board review within 30 days after its issuance.

(b) The request must include the information provided in Subsection (3).

(9)(a) Upon receiving a request for Wildlife Board review, the Wildlife Board shall, within a reasonable time, hold a hearing to consider the request.

(b) The Wildlife Board may:

(i) overturn the denial and approve the application; or

(ii) uphold the denial.

(c) The Wildlife Board shall provide the petitioner with a written decision within a reasonable time after making its decision.

KEY: wildlife, animal protection, import restrictions, zoological animals

August 11, 2014

Notice of Continuation March 5, 2013

23-14-18

23-14-19

23-20-3

23-13-14

63G-7-101 et seq.

R657. Natural Resources, Wildlife Resources.**R657-6. Taking Upland Game.****R657-6-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(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 guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-6-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Falconry" means the sport of taking quarry by means of a trained raptor.

(d) "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 a contract for sale of eligible property.

(e) "Migratory game bird" means, for the purposes of this rule, American crow, mourning dove, white-winged dove, band-tailed pigeon, and Sandhill crane.

(f) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(g) "Upland game" means pheasant, quail, chukar partridge, gray partridge, greater sage-grouse, ruffed grouse, dusky grouse, sharp-tailed grouse, cottontail rabbit, snowshoe hare, white-tailed ptarmigan, and the following migratory game birds: American crow, mourning dove, white-winged dove, band-tailed pigeon, and Sandhill crane.

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person may call the telephone number or register online as published in the guidebook of the Wildlife Board for taking upland game and wild turkey to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current valid hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to possess a hunting or combination license with the HIP registration number recorded on the license, demonstrating they have registered and provided information for the HIP program.

R657-6-4. Permits for Band-tailed Pigeon, Greater Sage-grouse, Sharp-tailed Grouse and White-tailed Ptarmigan.

(1)(a) A person may not take or possess:

(i) Band-tailed pigeon without first obtaining a Band-tailed pigeon permit;

(ii) Greater sage-grouse without first obtaining a Greater sage-grouse permit;

(iii) Sharp-tailed grouse without first obtaining a Sharp-tailed grouse permit; or

(iv) White-tailed ptarmigan without first obtaining a White-tailed ptarmigan permit.

(b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird Greater sage-grouse permit beginning on the date published in the guidebook of the Wildlife Board for taking upland game and wild turkey, if any permits are remaining.

(2)(a) A limited number of two-bird Greater sage-grouse permits are available in the areas published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(b) A Greater sage-grouse permit may only be used in one of the open areas as published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(c) Greater sage-grouse permits will be issued pursuant to R657-62-21.

(3)(a) A limited number of two-bird, Sharp-tailed grouse permits are available.

(b) A Sharp-tailed grouse permit may only be used in one of open areas as published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(c) Sharp-tailed grouse permits will be issued pursuant to R657-62-21.

(4) Band-tailed pigeon and White-tailed ptarmigan permits are available from Division offices, through the mail, and through the Division's Internet address by the first week in August, free of charge.

R657-6-5. Application Procedure for Sandhill Crane.

(1)(a) Sandhill crane permits will be issued pursuant to R657-62-21.

(b) Residents and nonresidents may apply.

(c) The application period for Sandhill crane is published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(2) A person may obtain only one Sandhill crane permit each year.

R657-6-6. Authorized Weapons.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, including a draw-lock, a crossbow, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size ranging between no. 2 and no. 8, except:

(i) migratory game birds may not be taken with a handgun, or a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) cottontail rabbit and snowshoe hare may be taken with any firearm not capable of being fired fully automatic; and

(iii) Sandhill crane may be taken with any size of nontoxic shot.

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a visible beam of light.

R657-6-7. Nontoxic Shot.

- (1) Only nontoxic shot may be used to take Sandhill crane.
- (2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except Sandhill crane.
- (3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service while on federal refuges or the following state waterfowl or wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

R657-6-8. Use of Firearms, Crossbows and Archery Tackle on State Wildlife Management Areas.

- (1) A person may not possess a firearm, a crossbow, or archery tackle, except during the specified hunting seasons or as authorized by the Division on the following wildlife management areas: Bear River Trenton Property Parcel, Browns Park, Bud Phelps, Huntington, James Walter Fitzgerald, Kevin Conway, Manti Meadows, Montes Creek, Nephi, Pahvant, Redmond Marsh, Roosevelt, Scott M. Matheson Wetland Preserve, Stewart Lake, Vernal, and Willard Bay.
- (2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-9. Use of Firearms, Crossbows, and Archery Tackle on State Waterfowl Management Areas.

- (1) A person may not possess a firearm, crossbow or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the Division on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Browns Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs, and Topaz.
- (2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.
- (3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-10. Shooting Hours.

- (1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:
 - (i) American crow, band-tailed pigeon, mourning dove, white-winged dove, and Sandhill crane may be taken only between one-half hour before official sunrise through official sunset.
 - (ii) Greater sage-grouse, ruffed Grouse, dusky grouse, sharp-tailed grouse, white-tailed ptarmigan, chukar partridge, gray partridge, pheasant, quail, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.
- (b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the guidebook of the Wildlife Board for taking upland game and wild turkey.
- (2) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset

through one-half hour before official sunrise.

R657-6-11. State Parks.

- (1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.
- (2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.
- (3) Hunting with shotguns, crossbow, or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-6-12. Falconry.

- (1)(a) Falconers must obtain an annual hunting or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:
 - (b) a Band-tailed pigeon permit before taking Band-tailed pigeon;
 - (c) a Greater sage-grouse permit before taking Greater sage-grouse;
 - (d) a Sharp-tailed grouse permit before taking Sharp-tailed grouse;
 - (e) a White-tailed ptarmigan permit before taking White-tailed ptarmigan; or
 - (f) a Sandhill crane permit before taking Sandhill crane.
- (2) Areas open and bag and possession limits for falconry are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-6-13. Baiting.

- (1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:
 - (a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:
 - (i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;
 - (ii) from a blind or other place of concealment camouflaged with natural vegetation;
 - (iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or
 - (iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.
 - (b) The taking of any upland game, except Sandhill crane, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-6-14. Use of Motorized Vehicles.

Motorized vehicle travel on all state wildlife management areas is restricted to county roads and improved roads that are posted open.

R657-6-15. Possession of Live Protected Wildlife.

A person may not possess live, protected wildlife.

Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-6-16. Tagging Requirements.

(1) The carcass of a Sandhill crane, Greater sage grouse, or Sharp-tailed grouse must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue Sandhill crane, Greater sage grouse, or Sharp-tailed grouse after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-6-17. Identification of Species and Sex.

One fully feathered wing must remain attached to each upland game bird and migratory game bird taken while it is being transported to allow species identification.

R657-6-18. Waste of Upland Game.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) A person shall not kill or cripple any upland game without making a reasonable effort to retrieve the upland game animal.

R657-6-19. Utah Pheasant Project.

(1) Boy Scouts, Girl Scouts, or youth enrolled in 4-H or FFA may collect and rear pheasants from eggs in nests destroyed by normal hay mowing operations. The 4-H club leader, FFA adviser or Scout Master shall first apply for and obtain a certificate of registration for this activity.

(2) Landowners or operators of mowing equipment may collect the eggs and possess them for no more than 24 hours for pick up by a person with a certificate of registration.

(3) Pheasants must be released by 16 weeks of age.

(4) These pheasants remain the property of the state of Utah.

R657-6-20. Use of Dogs.

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve upland game during open upland game hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

(a) dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:

- (i) Annabella;
- (ii) Bear River Trenton Property Parcel;
- (iii) Bicknell Bottoms;
- (iv) Blue Lake;
- (v) Browns Park;
- (vi) Bud Phelps;
- (vii) Clear Lake;
- (viii) Desert Lake;
- (ix) Farmington Bay;
- (x) Harold S. Crane;
- (xi) Hatt's Ranch
- (xii) Howard Slough;
- (xiii) Huntington;
- (xiv) James Walter Fitzgerald;
- (xv) Kevin Conway;
- (xvi) Locomotive Springs;
- (xvii) Manti Meadows;
- (xviii) Mills Meadows;
- (xix) Montes Creek;

- (xx) Nephi;
- (xxi) Ogden Bay;
- (xxii) Pahvant;
- (xxiv) Public Shooting Grounds;
- (xxv) Redmond Marsh;
- (xxvi) Richfield;
- (xxvii) Roosevelt;
- (xxviii) Salt Creek;
- (xxix) Scott M. Matheson Wetland Preserve;
- (xxx) Steward Lake;
- (xxxi) Timpie Springs;
- (xxxii) Topaz Slough;
- (xxxiii) Vernal; and
- (xxxiv) Willard Bay.

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

R657-6-21. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake International Airport boundaries as posted.

(2) Incorporated municipalities: Many incorporated municipalities prohibit the discharge of firearms and other weapons. Check with the respective city officials for specific boundaries and limitations.

(3) Wildlife Management Areas:

(a) Waterfowl management areas are open for hunting upland game only during designated waterfowl hunting seasons or as authorized by the Division, including: Blue Lake, Clear Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing.

R657-6-22. Live Decoys and Electronic Calls.

A person may not take migratory game birds by the use or aid of live decoys, recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds.

R657-6-23. Shipping or Exporting.

(1) No person may transport upland game by the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the Division must accompany each package containing upland game within or from the state.

(3) A person may export upland game or their parts from Utah only if:

- (a) the person who harvested the upland game

accompanies it and possess a valid license or permit corresponding to the tag, if applicable; or

(b) the person exporting the upland game or its parts, if it is not the person who harvested the upland game, has obtained a shipping permit from the Division.

R657-6-24. Spotighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-25. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

KEY: wildlife, birds, rabbits, game laws

August 11, 2014

23-14-18

Notice of Continuation June 28, 2010

23-14-19

R657. Natural Resources, Wildlife Resources.**R657-9. Taking Waterfowl, Common Snipe and Coot.****R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Daily Bag Limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(e) "Dark geese" means the following species: cackling, Canada, white-fronted and brant.

(f) "Light geese" means the following species: snow, blue and Ross'.

(g) "Live decoys" means tame or captive ducks, geese or other live birds.

(h) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(i) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(j) "Possession limit" the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(k) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(l) "Transport" means to ship, export, import or receive or deliver for shipment.

(m) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(n) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person under the age of 16.

R657-9-4. Permit Applications for Swan.

(1) Swan permits will be issued pursuant to R657-62-22.

R657-9-5. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-6. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) late swan questionnaires may be accepted pursuant to Rule R657-42-9(3). Swan permit holders are still required to present the swan or its head for measurement to a division office.

R657-9-7. Authorized Weapons.

(1) Migratory game birds may be taken with a shotgun, crossbow or archery tackle, including a draw lock.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells, except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking Waterfowl, Common snipe and Coot.

R657-9-8. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

R657-9-9. Use of Weapons on State Waterfowl Management Areas.

(1) A person may not possess a firearm, crossbow, or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive

Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs and Topaz.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-10. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased; provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-11. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line dike, and outside Units 1, 3, 4 and 5 as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units or as posted

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake, Topaz Slough

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and the portion of Harold S. Crane Waterfowl Management Area that falls within the county line.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

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

R657-9-12. Motorized Vehicle Access.

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-13. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath

the surface of the water.

R657-9-14. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-15. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-16. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, is legal on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-17. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-18. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-19. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-20. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-21. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-22. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-23. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-21.

R657-9-24. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-25. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-26. Migratory Bird Preservation Facilities.

(1) Migratory bird preservation facility means:

- (i) Any person who, at their residence or place of business and for hire or other consideration; or
- (ii) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or
- (iii) Any hunting club which, in the normal course of operations; receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment.

(2) No migratory bird preservation facility shall:

- (a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

- (i) the number of each species;
- (ii) the location where taken;
- (iii) the date such birds were received;
- (iv) the name and address of the person from whom such birds were received;
- (v) the date such birds were disposed of; and
- (vi) the name and address of the person to whom such birds were delivered; or
- (b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(3) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(4) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-27. Importation.

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-28. Use of Dogs.

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve turkey during open turkey hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

(a) dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:

- (i) Annabella;
- (ii) Bear River Trenton Property Parcel;
- (iii) Bicknell Bottoms;
- (iv) Blue Lake;
- (v) Browns Park;
- (vi) Bud Phelps;
- (vii) Clear Lake;
- (viii) Desert Lake;
- (ix) Farmington Bay;
- (x) Harold S. Crane;
- (xi) Hatt's Ranch
- (xii) Howard Slough;
- (xiii) Huntington;
- (xiv) James Walter Fitzgerald;
- (xv) Kevin Conway;
- (xvi) Locomotive Springs;
- (xvii) Manti Meadows;

- (xviii) Mills Meadows;
- (xix) Montes Creek;
- (xx) Nephi;
- (xxi) Ogden Bay;
- (xxii) Pahvant;
- (xxiv) Public Shooting Grounds;
- (xxv) Redmond Marsh;
- (xxvi) Richfield;
- (xxvii) Roosevelt;
- (xxviii) Salt Creek;
- (xxix) Scott M. Matheson Wetland Preserve;
- (xxx) Steward Lake;
- (xxx1) Timpie Springs;
- (xxx2) Topaz Slough;
- (xxx3) Vernal; and
- (xxx4) Willard Bay.

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

R657-9-29. Season Dates and Bag and Possession Limits.

(1) Season dates and bag and possession limits are specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-30. Closed Areas.

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

- (a) Antelope Island causeway - within 600 feet of either the north or south side.
- (b) Brown's Park - That part adjacent to headquarters.
- (c) Clear Lake - Spring Lake.
- (d) Desert Lake - That part known as "Desert Lake."
- (e) Farmington Bay - Headquarters and Learning center area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.
- (f) Ogden Bay - Headquarters area.
- (g) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."
- (h) Salt Creek - That part as posted known as "Rest Lake."
- (i) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.
- (j) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans.
- (k) State Parks

Hunting of any wildlife is prohibited within the boundaries

of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.

(l) Great Salt Lake Marina and adjacent areas as posted.

(m) Millard County

Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.

(n) Salt Lake International Airport - Hunting and shooting prohibited as posted.

R657-9-31. Shooting Hours.

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Common snipe, and coot are provided in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-32. Falconry.

(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-33. Migratory Game Bird Harvest Information Program (HIP).

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call the telephone number published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

- (a) hunting license number;
- (b) hunting license type;
- (c) name;
- (d) address;
- (e) phone number;
- (f) birth date; and
- (g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-34. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

KEY: wildlife, birds, migratory birds, waterfowl

August 11, 2014

23-14-18

Notice of Continuation August 16, 2011

23-14-19

50 CFR part 20

R657. Natural Resources, Wildlife Resources.**R657-46. The Use of Game Birds in Dog Field Trials and Training.****R657-46-1. Purpose and Authority.**

Under authority of Sections 23-14-18, 23-14-19 and 23-17-9 this rule provides the requirements, standards, and application procedures for the use of game birds in dog field trials and training.

R657-46-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Field trial" means an organized event where the abilities of dog handlers and their dogs are evaluated, including the ability of the dogs to hunt or retrieve game birds.
 - (b) "Game bird" means:
 - (i) crane;
 - (ii) dusky, ruffed, sage, sharp-tailed, and spruce grouse;
 - (iii) chukar, red-legged, and gray partridges;
 - (iv) pheasant;
 - (v) band-tailed pigeon;
 - (vi) northern bobwhite, California, Gambel's, Montezuma, mountain, and scaled quail;
 - (vii) waterfowl;
 - (viii) common ground, Inca, mourning, and white-winged dove;
 - (ix) wild or pen-reared wild turkey of the following subspecies:
 - (A) eastern;
 - (B) Florida or Osceola;
 - (C) Gould's;
 - (D) Merriam's;
 - (E) ocellated; and
 - (F) Rio Grande; and
 - (x) ptarmigan.
 - (c) "Quad flyer test" means throwing pen-reared game birds by hand from four fixed stations and shooting of the pen-reared game birds one immediately after the other.
 - (d) "Train" or "training" means the informal handling, exercising, teaching, instructing, and disciplining of dogs in the skills and techniques of hunting and retrieving game birds characterized by absence of fees, judging, or awards.

R657-46-3. Application for a Field Trial Certificate of Registration.

- (1)(a) A person may conduct a field trial using pen-reared game birds provided that person applies for and obtains a certificate of registration from the Division of Wildlife Resources, except as provided in Subsection (b).
- (b) A person may conduct a field trial using pen-reared game birds on a commercial hunting area without obtaining a certificate of registration.
- (2) Applications are available at any division office.
- (3) The application must include written permission from the owner, lessee, or land management agency of the property where the field trial is to be conducted.
- (4)(a) Applications must be submitted to the appropriate regional division office where the field trial is being held.
- (b) Applications must be received at least 45 days prior to the date of the field trial.
- (5) The division will not approve any application for an area where, in the opinion of the division, the field trial or the release of pen-reared game birds interferes with wildlife, wildlife habitat or wildlife nesting periods.
- (6) Field trials may be held only during the dates and within the area specified on the field trial certificate of registration.

R657-46-4. Use of Pen-Reared Game Birds for Field Trials.

(1) Legally acquired pen-reared game birds may be possessed or used for field trials.

(2) Any person using pen-reared game birds must have an invoice or bill of sale in their possession showing lawful personal possession or ownership of such birds.

(3) Pen-reared game birds may not be imported into Utah without a valid veterinary health certificate as required in Rules R58-1 and R657-4.

(4)(a) Each pen reared game bird must be marked with an aluminum leg band or other permanent marking before being released in the field trial, except as provided in Subsection (d).

(b) Aluminum leg bands may be purchased at any division office.

(c) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(d) Each pen-reared game bird used in a field trial that is conducted on a commercial hunting area may be released without marking each pen-reared game bird, as with an aluminum leg band.

(5) Pen-reared game birds used for a field trial may be released only on the property specified in the certificate of registration where the field trial is conducted.

(6) After release, pen-reared game birds may be taken:

(a) by the person who released the pen-reared game birds, or by any person participating in the field trial; and

(b) only during the dates of the field trial event as specified in the certificate of registration.

(7) Wild game birds may be taken only during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(8) Pen-reared game birds acquired for a field trial that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(9) Pen-reared game birds that leave the property where the field trial is held at the end of the field trial shall become the property of the state of Utah and may not be taken, except during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

R657-46-5. Use of Pen-Reared Game Birds for Dog Training.

(1) A person may train a dog using legally acquired pen-reared game birds provided:

(a) the person using the pen-reared game birds has an invoice or bill of sale in their possession showing lawful personal possession or ownership of the pen-reared game birds;

(b) each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released for training, except as provided in Subsection (3)(a);

(c) any pheasant released during training must be marked with a visible streamer or tape at least 12 inches in length before being released, and any pheasant killed during training must have the streamer or tape attached when killed; and

(d) the use of dogs complies with Rules R657-6, R657-9, and R657-54.

(2) Aluminum leg bands may be purchased at any division office.

(3)(a) Each pen-reared game bird used for dog training that is conducted on a commercial hunting area may be released without marking each pen-reared game bird with an aluminum leg band or other permanent marking.

(b) Any pheasant released during training on a commercial hunting area may be released without marking as provided in Subsections (1)(b) and (1)(c).

(4) The training may not consist of more than four dogs at any time, except the training may consist of more than four dogs

provided:

(a) the dogs exceeding four in number are eight months of age or younger; and

(b) no live ammunition is in possession of the person or persons engaged in training the dogs.

(5) A person or group of persons may not release more than ten pen-reared game birds per day or three pen-reared game birds per dog per day, whichever is greater.

(6) A person or group of persons may not use more than three firearms at any time, except four firearms may be used when training retrievers using the American Kennel Club quad flyer test.

(7) Pen-reared game birds acquired for training that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(8) Pen-reared game birds that are not recovered on the day of the training or pen-reared game birds that escape shall become property of the state of Utah and may not be recaptured or taken, except during legal hunting seasons as specified in the Upland Game and Waterfowl proclamations of the Wildlife Board.

(9) A person training dogs on official dog training areas, designated by the division, is not required to comply with Subsection (1)(c) or Subsections (4), (5) or (6).

R657-46-6. Use of Wild Game Birds for Dog Training.

(1) A person may train a dog on wild game birds provided:

(a) the dog, or the person training the dog, may not harass, catch, capture, kill, injure, or at any time, possess any wild game birds, except during legal hunting seasons as provided in the Upland Game or Waterfowl proclamations of the Wildlife Board;

(b) the use of dogs complies with Rules R657-6, R657-9, and R657-54;

(c) the person training a dog on wild game birds, except during legal hunting seasons:

(i) may not possess a firearm, except a pistol firing blank cartridges;

(ii) must comply with city and county ordinances pertaining to the discharge of any firearm;

(iii) must obtain written permission from the landowner for training on properly posted private property.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

KEY: wildlife, birds, dogs, training
August 11, 2014
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23-14-18
23-14-19

R657. Natural Resources, Wildlife Resources.**R657-54. Taking Wild Turkey.****R657-54-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(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 guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
- "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.
 - "CFR" means the Code of Federal Regulations.
 - "Falconry" means the sport of taking quarry by means of a trained raptor.

R657-54-3. Application Procedure for Wild Turkey.

(1) Permits for wild turkey will be issued pursuant to R657-62-25.

R657-54-4. Authorized Weapons.

Wild turkey may be taken only with

- Archery equipment, including a draw-lock, or a crossbow using broadhead tipped arrows or bolts; or
- a shotgun no larger than 10 gauge and no smaller than 28 gauge, firing shot sizes ranging between BB and no. 8.

R657-54-5. Shooting Hours.

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-6. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbows or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-54-7. Falconry.

Falconers may not release a raptor on wild turkeys during the spring seasons. Falconers may release a raptor on wild turkeys during the fall season, as published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-8. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-54-9. Baiting.

A person may not hunt turkey using bait, on or over any baited area where a person knows or reasonably should know

that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten.

R657-54-10. Sitting or Roosting Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-54-11. Tagging Requirements.

(1) The carcass of a turkey must be tagged before the carcass is moved from, or the hunter leaves, the site of kill.

(2) To tag a carcass, a person shall:

- completely detach the tag from the license or permit;
- completely remove the appropriate notches to correspond with:
 - the date the animal was taken;
 - the sex of the animal; and
 - attach the tag to the carcass so that the tag remains securely fastened and visible.

(3) A person may not:

- remove more than one notch indicating date or sex; or
- tag more than one carcass using the same tag.

(4) A person may not hunt or pursue turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-54-12. Identification of Species and Sex.

(1) During the spring seasons the head and beard must remain attached to the carcass of wild turkey while being transported.

(2) During the fall season only the head must remain attached to the carcass of wild turkey while being transported.

R657-54-13. Use of Dogs.

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve turkey during open turkey hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

(a) dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:

- Annabella;
- Bear River Trenton Property Parcel;
- Bicknell Bottoms;
- Blue Lake;
- Browns Park;
- Bud Phelps;
- Clear Lake;
- Desert Lake;
- Farmington Bay;
- Harold S. Crane;
- Hatt's Ranch
- Howard Slough;
- Huntington;
- James Walter Fitzgerald;
- Kevin Conway;
- Locomotive Springs;
- Manti Meadows;
- Mills Meadows;
- Montes Creek;
- Nephi;
- Ogden Bay;
- Pahvant;
- Public Shooting Grounds;

- (xxv) Redmond Marsh;
- (xxvi) Richfield;
- (xxvii) Roosevelt;
- (xxviii) Salt Creek;
- (xxix) Scott M. Matheson Wetland Preserve;
- (xxx) Steward Lake;
- (xxxi) Timpie Springs;
- (xxxii) Topaz Slough;
- (xxxiii) Vernal; and
- (xxxiv) Willard Bay.

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

R657-54-14. Closed Areas.

A person may not hunt wild turkey in any area posted closed by the Division or any of the following areas:

- (1) Salt Lake Airport boundaries as posted.
- (2) Incorporated municipalities: Many incorporated municipalities prohibit the discharge of firearms and other weapons. Check with the respective city officials for specific boundaries and limitations.
- (3) All State Waterfowl Management Areas except Browns Park and Stewart Lake
- (4) All National Wildlife Refuges unless declared open by the managing authority.
- (5) Military installations, including Camp Williams, are closed to hunting and trespassing.

R657-54-15. Possession of Live Protected Wildlife.

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-54-16. Spotighting.

- (1) Except as provided in Section 23-13-17:
 - (a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and
 - (b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.
- (2) The provisions of this section do not apply to:
 - (a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or
 - (b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-54-17. Exporting Wild Turkey from Utah.

A person may export wild turkey or their parts from Utah only if:

- (1) the person who harvested the turkey accompanies it and possess a valid permit corresponding to the tag; or
- (2) the person exporting the turkey or its parts, if it is not

the person who harvested the turkey, has obtained a shipping permit from the Division.

R657-54-18. Waste of Game.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) A person shall not kill or cripple any wild turkey without making a reasonable effort to retrieve the turkey.

R657-54-19. Wild Turkey Poaching Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a wild turkey under Section 23-20-4, within any limited entry area may receive a permit from the Division to hunt wild turkey in the following year on the same limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a Poaching-Reported Reward Permit would exceed 5 percent of the total number of limited entry permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the Division may issue a permit as outlined in Subsection (b).

(b) A permit for a wild turkey, on an alternative limited entry area that has been allocated more than 20 permits, may be issued.

(3)(a) The Division may issue only one Poaching-Reported Reward Permit for any one wild turkey illegally taken.

(b) No more than one Poaching-Reported Reward Permit shall be issued to any one person per successful prosecution.

(c) No more than one Poaching-Reported Reward Permit shall be issued to any one person in any one calendar year.

(d) A person must possess a Utah hunting or combination license to receive a Poaching-Reported Reward Permit.

(4)(a) Poaching-Reported Reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the Poaching-Reported Reward Permit.

(5) Any person who receives a Poaching-Reported Reward Permit must be eligible to hunt and obtain wild turkey permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-54-20. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

**KEY: wildlife, wild turkey, game laws
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23-14-18

Notice of Continuation August 18, 2014

23-14-19

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 greater 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, Greater 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) Greater 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, Greater 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 17 years of age or younger on July 31.

(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.

(v) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(c) Youth applicants who apply for a management buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 30% of management buck deer permits in each unit are reserved for youth hunters.

(iii) Bonus points shall be used when applying

(iv) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be

returned to the management buck deer drawing.

(3) Senior

(a) For purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(b) Senior applicants who apply for a management buck deer permit

(i) will automatically be considered in the senior drawing based upon their birth date.

(ii) 30% of management buck deer permits in each unit are reserved for senior hunters.

(iii) Bonus points shall be used when applying.

(c) Any reserved permits remaining and any senior applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.

(4) 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) general buck deer - lifetime license;

(vi) general buck deer - dedicated hunter;

(vii) general buck deer - youth;

(viii) general buck deer; and

(ix) 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.

(5) 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.

(6) 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 17 years of age or younger on July 31.

(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 Greater 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 Greater 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 17 years of age or younger on July 31 for the purpose of obtaining Sharp-tailed grouse and Greater Sage grouse permits, and 15 years of age or younger on the Youth Waterfowl hunt, as , for the purpose of obtaining a Sandhill Crane permit.

(b) Fifteen percent of the Sandhill Crane, Sharp-tailed grouse and Greater sage grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill Crane, Sharp-tailed grouse or Greater 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 Youth Waterfowl Day hunt.

(b) Fifteen percent of the Swan permits are reserved for youth hunters.

(c) Youth who apply for a swan 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.

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 limited entry or general spring wild turkey permit each year. A person may obtain wild turkey conservation permits in addition to obtaining one limited entry or spring wild turkey permit as well as a fall general season 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.

(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.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits and fall general season permits are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 17 years of age or younger on July 31.

(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.

(e) Youth who are successful in obtaining a limited entry turkey permit but unsuccessful in harvesting a bird during the limited entry hunt season, may use the limited entry turkey permit to participate in the youth 3-day turkey hunt and the spring general season turkey hunt provided no more than one bird is harvested.

KEY: wildlife, permits

August 11, 2014

Notice of Continuation April 14, 2014

23-14-18

23-14-19

R657. Natural Resources, Wildlife Resources.**R657-68. Trial Hunting Authorization.****R657-68-1. Purpose and Authority.**

Pursuant to Sections 23-14-18 and 23-14-19, this rule implements the trial hunting authorization program established in Section 23-19-4.6 to expand public participation in hunting sports by allowing a person to temporarily obtain specified hunting licenses and permits and participate in hunting activities on a trial basis without first satisfying regular hunter education requirements.

R657-68-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Commercial hunting area" means a parcel of land where privately owned game birds are released under Section 23-17-6 and R657-22 for the purpose of allowing hunters to take them for a fee.
 - (b) "Division drawing" means a random selection process administered by the division or under its authority for the purpose of allocating hunting permits to the public.
 - (i) "Division drawing" includes the wildlife convention permit drawing administered under R657-55.
 - (c) "Multi-year license" means a license issued by the division under R657-45-3 that is valid for a period exceeding 365 days.
 - (d) "Supervising hunter" means a person qualified under R657-68-5(1)(b) that accompanies a trial hunter while participating in hunting activities.
 - (e) "Trial hunter" means a person who possesses a valid hunting license or permit obtained with a trial hunting authorization pursuant to this rule.
 - (f) "Trial hunting authorization" means a document issued by the division authorizing the holder to obtain and use specified hunting licenses and permits without having completed an approved hunter education course, subject to the qualifications, requirements and limitations set forth in this rule.
 - (g) "Written consent" means a written or typed document containing the:
 - (i) full name, date of birth, and home address of the trial hunter;
 - (ii) full name, home address, and phone number of the supervising hunter;
 - (iii) nature of the planned hunting activity and the general area where it will occur;
 - (iv) parent or legal guardian's consent for the:
 - (A) trial hunter to participate in the described hunting activity; and
 - (B) supervising hunter to transport and accompany the trial hunter in the activity; and
 - (v) name, signature, and phone number of the authorizing parent or legal guardian.

R657-68-3. Obtaining a Trial Hunting Authorization.

- (1) Upon application, the division may issue a trial hunting authorization to a resident or nonresident who:
 - (a) is 11 years of age or older at the time of application;
 - (b) is eligible under state and federal law to possess a firearm, muzzleloader, bow and arrow, or crossbow;
 - (c) is born after December 31, 1965 and has not completed an approved hunter education course; and
 - (d) successfully completes an abbreviated online course on trial hunting program requirements and hunting ethics and safety.
- (2) The division may charge a handling fee for a trial hunting authorization.

R657-68-4. Effect and Term of a Trial Hunting Authorization.

(1)(a) A person who obtains a trial hunting authorization will receive an accompanying registration number to be used in lieu of a hunter education number when applying for or purchasing a hunting license or permit authorized in Subsection (b).

(b) A person who possesses a trial hunting authorization may apply for and purchase the following Utah hunting licenses and permits, notwithstanding the hunter education requirements in Section 23-19-11 and R657-23:

- (i) hunting license, excluding multi-year licenses;
- (ii) combination license, excluding multi-year licenses;
- (iii) all hunting permits, excluding the following big game permits allocated through a division drawing:
 - (A) premium limited entry;
 - (B) limited entry;
 - (C) once-in-a-lifetime;
 - (D) cooperative wildlife management unit;
 - (E) dedicated hunter; and
 - (F) sportsman.

(2)(a) A trial hunting authorization:

(i) is valid for a single, three year term, except as provided in Subsection (6); and

(ii) shall immediately terminate upon the holder successfully completing an approved hunter education course, as provided in Section 23-19-11 and R657-23.

(b) A person may not obtain more than one trial hunting authorization in a lifetime.

(3) A trial hunting authorization shall be considered an "approved hunter education course" under Section 23-17-6(3)(a)(ii) for the exclusive and limited purpose of hunting on a commercial hunting area.

(a) A person who hunts on a commercial hunting area with a trial hunting authorization is subject to the requirements in R657-68-5.

(4)(a) A person who possesses a current trial hunting authorization may not participate in the Hunter Mentoring Program (R657-67) as a hunting mentor.

(b) A person who possesses a current trial hunting authorization may participate in the Hunter Mentoring Program (R657-67) as a qualifying minor, as hereafter provided.

(i) A trial hunting authorization will be recognized by the division as a "hunter education program" under R657-67-3(1)(b) for the exclusive and limited purpose of a qualifying minor participating in the Hunter Mentoring Program.

(ii) Notwithstanding the big game permit limitations in Subsection R657-68-4(1)(b)(iii), a qualifying minor possessing a current trial hunting authorization may share any big game permit authorized in the Hunter Mentoring Program rule.

(iii) Both the qualifying minor and hunting mentor are subject to the provisions of this rule and the Hunter Mentoring Program rule when a hunting permit is shared under R657-67-3 with a qualifying minor possessing a current trial hunting authorization.

(5) A person that applies for a big game hunting permit with a trial hunting authorization is subject to the minimum age requirements set forth in Section 23-19-22.

(6)(a) A trial hunting authorization that expires after a hunting permit application is filed in a division drawing shall remain valid to the date the permit is issued for the exclusive purpose of receiving and using the permit.

(i) A trial hunting authorization extended under Subsection (6)(a) beyond the prescribed three year term may not be used during the extension period to obtain any other hunting license or permit.

(b) A person that obtains a license or permit with a valid trial hunting authorization that thereafter expires prior to the conclusion of the hunting season assigned to that license or permit may use the license or permit through the entire season, subject to the limitations and conditions set forth in R657-68-5.

(c) A person that successfully completes an approved hunter education course prior to using a hunting license or permit obtained with a trial hunting authorization is not subject to the limitations and conditions set forth in R657-68-5, provided proof of hunter education compliance is carried on the person while hunting.

**KEY: wildlife, game laws, hunter education
August 11, 2014**

23-14-18
23-14-19
23-19-4.6

R657-68-5. Using a Hunting License or Permit Obtained with a Trial Hunting Authorization.

(1) A person that obtains a hunting license or permit with a trial hunting authorization issued under R657-68-3 may use the license or permit, provided they are:

- (a) 12 years of age or older; and
- (b) accompanied, as defined in Section 23-20-20(1), in the field at all times while hunting by a resident or nonresident, supervising hunter who:
 - (i) is 21 years of age or older;
 - (ii) is eligible under state and federal law to possess a firearm and archery equipment;
 - (iii) possesses a current Utah hunting or combination license;
 - (iv) has satisfied applicable hunter education requirements under Section 23-19-11; and
 - (v) obtains the written consent of the parent or legal guardian when accompanying a trial hunter that is under 18 years of age.

R657-68-6. Supervising Hunter Responsibilities.

(1) A supervising hunter that escorts a trial hunter under R657-68-5(1)(b) shall:

- (a) accompany, as defined in Section 23-20-20(1), the trial hunter at all times in the field while hunting;
- (b) not accompany more than two trial hunters in the field at any point in time;
- (c) provide the trial hunter direct supervision and instruction on hunting regulations, ethics and safety; and
- (d) possess on their person a valid Utah hunting or combination license issued in their name; and
- (e) possess the written consent of the parent or legal guardian when accompanying a trial hunter under 18 years of age.

R657-68-7. Violation and Discipline.

(1)(a) A trial hunter may not take protected wildlife under authority of a license or permit obtained with a trial hunting authorization, unless accompanied at all times in the field by a supervising hunter satisfying the requirements of R657-68-5(1)(b).

(b) A person may not take game birds on a commercial hunting area under authority of a trial hunting authorization, unless accompanied at all times in the field by a supervising hunter satisfying the requirements of R657-68-5(1)(b).

(2) The division may refuse to issue a trial hunting authorization to a person that:

- (a) fails to satisfy the eligibility criteria in R657-68-3 or R657-68-5(1)(a);
- (b) provides false or misleading information in the application for a trial hunting authorization; or
- (c) has engaged in conduct that results in a conviction, no contest plea, plea held in abeyance, or diversion agreement to a:
 - (i) violation of the Wildlife Resources Code, or the rules and guidebooks of the Wildlife Board; or
 - (ii) crime that when considered with the privileges granted in a trial hunting authorization bears a reasonable relationship to the person's ability or willingness to safely and responsibly participate in the program.

(3) A hunting license or permit is invalid when obtained with a trial hunting authorization that is acquired by fraud, deceit, or misrepresentation.

R698. Public Safety, Administration.**R698-5. Hazardous Chemical Emergency Response Commission.****R698-5-1. Adoption, Title, Purpose, and Prohibitions.**

Pursuant to Section 63K-3-301(2), Utah Code Annotated 1953, the Department of Public Safety adopts minimum rules establishing a state hazardous chemical emergency response commission advisory committee, the creation, modification or dissolving of local emergency planning committees, and supervising the overall planning and direction of the local emergency planning committees.

R698-5-2. Definitions.

2.1 "Advisory Committee" means State Emergency Response Commission Advisory Committee.

2.2 "EPCRA" means Emergency Planning and Community Right-to-Know Act of 1986.

2.3 "LEPC" means Local Emergency Planning Committee.

2.4 "SERC" means State Hazardous Chemical Emergency Response Commission.

2.5 "SERC Advisory Committee" means State Hazardous Chemical Emergency Response Commission Advisory Committee.

2.6 "USC" means United States Code.

R698-5-3. State Emergency Response Commission Advisory Committee.

3.1 There is created by the Department of Public Safety, the State Hazardous Chemical Emergency Response Commission Advisory Committee, whose duties are to provide direction to the SERC in the following matters: the creation, modification or dissolving of local emergency planning committees; methods and procedures to improve the effectiveness of the LEPC; the review of LEPC hazardous materials emergency response plans; the development of procedures for collection, processing, use and public access to information submitted as required by EPCRA; procedures for the distribution of funding to each LEPC obtained through the US Department of Transportation Hazardous Materials Emergency Preparedness Grant; assist in stated hazardous materials emergency response planning efforts; and, the review of the Statewide Hazardous Materials Plan (ESF10).

3.2 The Advisory Committee's members shall be appointed by the SERC, shall serve four year terms, and shall consist of the following members:

3.2.1 A member representing the hazardous chemical transportation industry.

3.2.2 Two members representing fixed site regulated industries.

3.2.3 A member representing the environmental cleanup contractors.

3.2.4 A member representing the local health departments.

3.2.5 A member representing the urban LEPC.

3.2.6 A member representing the rural LEPC.

3.2.7 A member representing the Hazardous Materials Advisory Council.

3.2.8 A member representing established environmental interest groups.

3.2.9 A member representing the Utah National Guard.

3.2.10 Two members from the general public.

3.3 The Advisory Committee shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

3.4 The Advisory Committee shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the first quarter of each calendar year. If voted upon by the Advisory Committee,

the vice chair will become the chair the next succeeding calendar year.

3.5 If an Advisory Committee member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the SERC.

3.6 A member of the Advisory Committee that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another Advisory Committee member vote by proxy, if submitted and approved by the chair prior to the meeting.

3.7 The Chair or Vice Chair of the Advisory Committee shall report to the SERC the activities of the Advisory Committee at regularly scheduled SERC meetings. A member of the Advisory Committee may report to the SERC the activities of the Advisory Committee in the absence of the Chair or Vice Chair.

3.8 The Advisory Committee shall consider all subjects presented to them, subjects assigned to them by the SERC, and shall report their recommendations to the SERC at scheduled SERC meetings.

3.9 One-half of the members of the Advisory Committee shall be reappointed or replaced by the SERC every two years. When a vacancy occurs in the Advisory Committee, a replacement shall be appointed by the SERC to complete the remainder of the term.

3.10 Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.10.1 Members may decline to receive per diem and expenses for their service.

3.11 State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.11.1 State government officer and employee members may decline to receive per diem and expenses for their service.

3.12 Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.12.1 Local government members may decline to receive per diem and expenses for their service.

R698-5-4. Local Emergency Planning Committee.

4.1 The creation, modification or dissolution of an LEPC shall be approved by the SERC.

4.2 A jurisdiction requesting the formation of an LEPC shall provide the following information to the SERC Advisory Committee:

4.2.1 A plan for coordinating the proposed additional LEPC with the county LEPC and/or any other city formed LEPC in that county.

4.2.2 An assessment of the jurisdiction's population and hazardous materials risk, to include but not limited to fixed facilities, rail, highways, and hazardous material pipelines.

4.2.3 A determination of how that agency, if allowed to form an LEPC, would meet all federal LEPC standards as identified in 42 USC Chapter 116.

4.3 An LEPC wishing to dissolve shall submit the following to the SERC Advisory Committee:

4.3.1 Reasons why the dissolution is in the best interest of

the public served by the LEPC,

4.3.2 A formal agreement with another LEPC addressing:

4.3.2.1 The assumption of LEPC duties identified in 42 USC Chapter 116,

4.3.2.2 The transfer of remaining LEPC operational funds,

4.3.2.3 The assumption of outstanding LEPC financial obligations,

4.3.3 A plan to notify facilities located within the jurisdiction of the dissolving LEPC who submitted chemical inventory or chemical emergency planning information to the LEPC within the previous year, providing notice of the LEPC dissolution and providing the name and mailing address of the LEPC assuming the dissolving LEPC duties.

4.4 By July 1 of each year LEPCs shall submit to the SERC Advisory Committee: a current list of voting members, the group or organization represented by each voting member, a designation of and contact information for the LEPC chair, or co-chairs, and vice-chairs.

4.5 The SERC Advisory Committee shall evaluate information submitted in accordance with Sections 4.2, 4.3 or 4.4 of these rules and shall make a recommendation to the SERC concerning LEPC creation, modification or dissolution.

4.6 The SERC shall include the recommendation of the SERC Advisory Committee, all information submitted to the SERC Advisory Committee, and comments of directly affected LEPCs, in its decision to approve or disapprove the formation, modification or dissolution of an LEPC.

4.7 The LEPC shall coordinate its overall planning and direction with the SERC. The SERC shall supervise the overall planning and direction of the LEPC.

4.8 The LEPC shall submit a copy of their hazardous materials emergency response plan to the SERC for review.

4.9 The SERC shall approve the amount of US Department of Transportation Hazardous Materials Emergency Preparedness Grant funding to be given to each LEPC and shall establish criteria for that funding to be awarded.

R698-5-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the SERC shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

5.2 An agency whose request to create, modify or dissolve an LEPC is denied by the SERC shall have an opportunity for a hearing before the SERC if requested by that agency within 20 days after receiving notice.

5.3 All adjudicative proceedings, other than criminal prosecution taken by the SERC, shall commence in accordance with UCA, Section 63G-4-201.

5.4 The SERC shall act as the hearing authority, and shall convene after timely notice to all parties involved. The members of the SERC acting as the hearing authority shall consist of the Commissioner of Public Safety and the Executive Director of the Department of Environmental Quality. The SERC shall also be joined when acting as the hearing authority by a representative from the Attorney General's Office.

5.5 After acting as the hearing authority, the SERC shall direct the secretary to issue a signed order to the agency involved giving the decision of the SERC within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

5.6 Reconsideration of the SERC decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

5.7 Judicial review of all final SERC actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

R746. Public Service Commission, Administration.**R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.****R746-200-1. General Provisions.**

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- When residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. In this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the Commission. Except as provided in R746-200-7(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

R746-200-2. General Definitions.

A. "Account Holder" -- A person, corporation, partnership, or other entity which has agreed with a public utility to pay for receipt of residential utility service and to which the utility provides service.

B. "Applicant" -- As used in these rules means a person, corporation, partnership, or other entity which applies to a public utility for residential utility service.

C. "Budget Billing" -- Monthly residential payment plan under which the customer's estimated annual billing is divided into 12 monthly payments.

D. "Deferred Payment Agreement" -- As used in these rules means an agreement to receive, or to continue to receive, residential utility service pursuant to Section R746-200-5 and to pay an outstanding debt or delinquent account owed to a public utility.

E. "Residential Utility Service" -- Means gas, water, sewer, and electric service provided by a public utility to a residence.

F. "Termination of Service" -- The terms "termination," "disconnection," and "shutoff" as used in these rules are synonymous and mean the stopping of service for whatever cause.

G. "Load Limiter" -- Device which automatically interrupts electric service at a residence when the preset kW demand is exceeded. Service is restored when the customer decreases usage and then presses the reset button on the device.

R746-200-3. Deposits, Eligibility for Service, and Shared Meter or Appliance.

A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. For electric cooperatives and electric service districts, interest rates shall be determined by the governing board of directors of the cooperative or district and filed with the Commission and shall be deemed approved by the Commission unless ten percent or more of the customers file a request for agency action requesting an investigation and hearing. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid when the deposit is required.

B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-7(C)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

C. Shared Meter or Appliance - In rental property where

one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the utility, the utility will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly and he has knowledge of the account responsibility.

R746-200-4. Account Billing.

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months. This section applies to permanent continuous service customers, not to seasonal customers.

B. Estimated Billing --

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and give a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-7(C)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";
2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";
3. the amount of payments made to the account during the current billing cycle using a term such as "payments";
4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";
5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";
6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";
7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;
8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

D. Late Charge --

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

F. Disputed Bill --

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-8, Informal Review, and R746-200-9, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

G. Unpaid Bills - Utilities transferring unpaid bills from inactive or past accounts to active or current accounts shall follow these limitations:

1. A utility company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.

2. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.

3. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

4. The customer may dispute the transferred amount pursuant to R746-200-4(F).

R746-200-5. Deferred Payment Agreement.

A. Deferred Payment Agreement --

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B) unless the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service. If the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service, the use of a deferred payment agreement is at the utility's discretion.

2. An applicant or account holder shall have the right to a deferred payment agreement, consisting of 12 months of equal monthly payments, if the full amount of the delinquent balance plus interest shall be paid within the 12 months and if the applicant or account holder agrees to pay the initial monthly installment. The account holder shall have the right to pre-pay a monthly installment, pre-pay a portion of, or the total amount of the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current

month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

3. Payment Options

a. If a utility has a budget billing or equal payment plan available, it shall offer the account holder the option of:

i. agreeing to pay monthly bills for future residential utility service as they become due, plus the monthly deferred payment installment, or

ii. agreeing to pay a budget billing or equal payment plan amount set by the utility for future residential utility service plus the monthly deferred payment installment.

b. When negotiating a deferred payment agreement with a utility that does not offer a budget billing or equal payment plan, the account holder shall agree to pay the monthly bills for future residential utility service plus the monthly deferred payment installment necessary to liquidate the delinquent bill.

4. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

5. A deferred payment agreement may include a finance charge as approved by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's discretion.

R746-200-6. Reconnection of Discontinued Service.

A. Public utilities shall have personnel available 24 hours each day to reconnect utility service. Service shall be reconnected as soon as possible, but no later than the next generally recognized business day after the customer has requested reconnection and complied with all necessary conditions for reconnection of service; which may include payment of reconnection charges and compliance with deferred payment agreement terms.

B. If a customer requests reconnection or other services outside of the utility's normal business days or hours of operation, the utility shall inform the customer of any additional charges or terms, as specified in the utility's tariff provisions, applicable to the customer's request.

R746-200-7. Termination of Service.

A. Definitions. As used in this section (R746-200-7):

1. "Licensed medical provider" means a medical provider:

a. who holds a current and active medical license under Utah Code Title 58; and

b. whose scope of practice authorizes the medical provider to diagnose the condition described by the medical provider under this rule,

2. "Life-supporting equipment" means life-supporting medical equipment:

a. with normal operation that requires continuation of public utility service; and

b. used by an individual who would require immediate assistance from medical personnel to sustain life if the life supporting equipment ceased normal operations.

3. "Life-supporting equipment statement" means a written statement:

a. signed by the licensed medical provider for the account holder or resident who utilizes life-supporting equipment; and

b. including:

i. a description of the medical need of the account holder

or resident who utilizes life-supporting equipment;

ii. the account holder's name and address;

iii. name of resident using life-supporting equipment and

relationship to account holder, if different than account holder;

iv. the health infirmity and expected duration;

v. identification of the life-support equipment that requires the utility's service;

vi. a determination by the licensed medical provider that immediate assistance from medical personnel to sustain life would be required if the life supporting equipment ceased normal operations; and

vii. the name and contact information of the licensed medical provider for the resident who utilizes life-supporting equipment,

4. "Serious illness or infirmity statement" means a written statement:

a. signed by a licensed medical provider;

b. written on:

i. a form obtained from the public utility; or

ii. the licensed medical provider's letterhead stationary;

c. legibly describing:

i. a diagnosed medical condition under which termination of utility service will injure the person's health or aggravate the person's illness; and

ii. the anticipated duration of the diagnosed medical condition.

B. Delinquent Account --

1. A residential utility service bill which has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if he has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

C. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information;

or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-

200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than \$25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

D. Restrictions upon Termination of Service -- Medical Reasons --

1. Serious Illness or Infirmary. If a public utility receives a serious illness or infirmity statement:

a. the public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;

b. the public utility is not required to provide the continuation or restoration described in R746-200-7.D.1.a. more than two times to an individual customer or residence during the same calendar year; and

c. the account holder is liable for the cost of residential utility service during the period of continued or restored service.

2. Life-Supporting Equipment.

a. After receiving a life-supporting equipment statement, the public utility:

i. shall mark and identify applicable meter boxes where the life-supporting equipment is used;

ii. may not terminate service to the residence unless the public utility has obtained prior approval from the Commission; and

iii. may request annual verification from the licensed medical provider of the life-supporting equipment.

b. A public utility may petition the Commission for authorization to terminate service on an account where the public utility has received a life-supporting equipment statement and the related medical provider verification:

i. if the account is in default;

ii. if the utility has:

AA. followed R746-200-5 on offering a deferred payment agreement; or

BB. if R746-200-5 does not apply, allowed the customer one month to enter into a deferred payment agreement that may last up to 12 months; and

iii. by filing its petition with the Commission and providing a copy to the Division.

c. A petition for authorization to terminate service shall contain:

i. the public utility's written request to the Commission to terminate service;

ii. the life-supporting equipment statement;

iii. the information provided to the public utility by the licensed medical provider;

iv. a copy of a letter sent to the account holder and, if appropriate, to a third party, notifying the account holder of the account holder's right to file a protest with the Commission within 10 days; and

v. an affidavit verifying the public utility provided the

account holder and, if appropriate, a third party, the information required by this rule.

d. Within two business days after receiving a petition for authorization to terminate service, the Division shall:

i. notify the account holder by regular and certified mail that the utility is requesting authorization from the Commission to terminate service; and

ii. instruct the account holder to contact the utility for further information.

e. After receiving a petition for authorization to terminate service, the Commission may:

i. schedule an expedited hearing if a protest is received within 10 days; or

ii. issue an order authorizing termination of service if the requirements of this rule have been satisfied.

f. If a public utility receives authorization to terminate service, the public utility shall provide a 48 hour notice of termination to the customer consistent with R746-200-7.G.2.

g. The account holder is liable for the cost of residential utility service during the period of service, including throughout all proceedings related to life-supporting equipment.

E. Payments from the Home Energy Assistance Target (HEAT) Program -- Suppliers may not discontinue utility service to a low-income household for at least 30 days after receiving utility payment or verification of utility payment from the HEAT Program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination of service for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;

f. the date on which payment arrangements must be made to avoid termination of service; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by

the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. A public utility shall send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which he wants service disconnected to his residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which he wants service disconnected and sign an affidavit that he is not requesting termination of service as a means of evicting his tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Handicapped -- The state recognizes that the elderly and handicapped may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater

for the elderly and handicapped due to communication barriers which may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-7(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-7(D)(1), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-7(D)(2), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and handicapped persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

R746-200-8. Informal Review.

A. A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. Mediation -- If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the

date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation -- The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. Commission Review -- If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, if any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-7(F), Termination of Service Without Notice.

R746-200-9. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

R746-200-10. Penalties.

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may use the informal and formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

KEY: public utilities, rules, utility service shutoff

August 22, 2014

Notice of Continuation November 28, 2012

54-4-1

54-4-7

54-7-9

54-7-25

R746. Public Service Commission, Administration.**R746-341. Lifeline Rule.****R746-341-1. Applicability.**

This Rule applies to each telecommunications corporation that is designated as an eligible telecommunications carrier (ETC) by the Commission, pursuant to 47 U.S.C. 214.

R746-341-2. Definitions.

A. "Account holder" -- means the person responsible to pay the Lifeline account bills.

B. "Applicant" -- means an ETC's customer, residing in an ETC's service area, who fills out an application for Lifeline service.

C. "ETC" -- means an eligible telecommunications carrier.

D. "Federal ETC" -- means an ETC that qualifies for, and participates in, only the federal Lifeline program.

E. "Federal Poverty Guidelines" -- means the poverty guidelines issued each year by the Department of Health and Human Services and published in the Federal Register.

F. "Household" -- means a single person or group of individuals who meet the definition of mutual support contained in the federal Lifeline rules established pursuant to 47 U.S.C. 214.

G. "Income" -- means gross income, whether earned or unearned, received by all members of the household including, but not limited to, salary before deductions. Income shall not include student financial aid, military housing and cost-of-living allowances, or irregular income from occasional small jobs.

H. "Lifeline" -- means either federal or state programs defined by 47 U.S.C. 214 and this rule.

I. "NLAD" -- means the National Lifeline Accountability Database.

J. "Participant" -- means an ETC's customer currently receiving a Lifeline benefit.

K. "Program administrator" -- means the state government agency with which the Commission contracts to administer the initial eligibility verification and continued eligibility verification, of the State Lifeline participants.

L. "State ETC" -- means an ETC that participates in both the federal and state Lifeline programs.

R746-341-3. Eligibility Requirements.

A. Initial Program-Based Criteria -- An ETC shall provide Lifeline telephone service to an applicant's household which, using an approved application form, is verified by either the program administrator (for State ETCs), or by a federal ETC, to be eligible for public assistance under one of the following or its successor programs:

1. Medicaid;
 2. Supplemental Nutrition Assistance Program (SNAP or Food Stamps);
 3. Supplemental Security Income (SSI);
 4. Federal Public Housing Assistance (Section 8);
 5. Low-Income Home Energy Assistance Program (LIHEAP);
 6. Temporary Assistance to Needy Families (TANF);
 7. National School Lunch Program's Free Lunch Program;
- or
8. Head Start (if income eligibility criteria are met).

B. Tribal Residents -- For an individual who could qualify for Tribal programs, but who wishes to receive (non-Tribal) Lifeline service instead of Tribal Lifeline service, the following programs may be used to determine eligibility in addition to any of the above listed programs:

1. Bureau of Indian Affairs General Assistance;
2. Tribally-Administered Temporary Assistance for Needy Families (TTANF); or
3. Food Distribution Program on Indian Reservations (FDPIR).

C. Initial Income-Based Criteria -- An ETC shall provide Lifeline telephone service to an applicant who certifies via supporting documentation (to either the ETC for federal ETC customers, or the program administrator for state ETC customers), under penalty of perjury, that the applicant's household income is at or below 135 percent of the then applicable Federal Poverty Guidelines.

1. Income-based eligibility is based on family size and actual income; therefore, an applicant shall certify, under penalty of perjury, the number of individuals residing in the household.

2. An applicant shall certify, under penalty of perjury, that the documentation presented accurately represents the applicant's annual household income. The following documents, or any combination of these documents, are acceptable for Lifeline certification;

- a. Prior year's state, federal, or tribal tax return;
- b. Current year-to-date earnings statement from an employer or three consecutive months of paycheck stubs;
- c. Social Security statement of benefits;
- d. Veterans Administration statement of benefits;
- e. Retirement/pension statement of benefits;
- f. Unemployment/Workers Compensation statement of benefits;
- g. Federal or tribal notice letter of participation in Bureau of Indian Affairs General Assistance; or
- h. Divorce decree or child support wage assignment statement.

D. Eligibility Certification -- The application form for participation shall be supplied by the ETC or the program administrator and shall be consistent with both the federal requirements, then in effect, and any additional information requirements of the program administrator, and shall include:

1. a statement, under penalty of perjury, as to whether the person is participating in one of the programs listed in Subsection R746-341-3(A) or qualifies under other federal eligibility criteria; or a statement, under penalty of perjury, as to whether the person's household income is at or below 135 percent of the current Federal Poverty Guidelines;

2. if qualified by income-based criteria, a statement, under penalty of perjury, that identifies the number of individuals residing in the household and affirms that the documentation presented to support eligibility accurately represents the applicant's household income;

3. a statement that if the applicant is later shown to have submitted false information in an attempt to qualify for the Lifeline program, the applicant shall be responsible to re-pay the benefits received; and

4. the signature of applicant, either physical or electronic.

E. False Certification Penalties -- A participant who does not qualify, but who has submitted false documentation or statements to qualify for the Lifeline program, is responsible to re-pay the value of the benefits received to the state Lifeline program, and is subject to whatever penalties are then current for the federal Lifeline program.

F. Tribal Land Lifeline Discounts - This rule does not govern or otherwise affect the Tribal Land Lifeline Discount program.

R746-341-4. Duties of the Program Administrator.**A. Initial Eligibility**

1. The program administrator shall process all applications submitted for participation in the state Lifeline telephone service program after checking the NLAD for pre-existing participation. The program administrator shall inform the applicant and the state ETC of the results of the application process.

B. Annual Eligibility Verification

1. The program administrator shall verify on an annual basis the continuing eligibility status of state ETC Lifeline

telephone service participants. The annual eligibility verification shall be performed on a participant list current as of December 31, and shall be conducted in the month following the deadline for submission of Federal Communication Commission Form 497.

C. De-Enrollment Process

1. The program administrator shall manage the de-enrollment process for state ETC Lifeline telephone service participants who are no longer eligible for the program. Upon an initial finding that a Lifeline recipient is no longer eligible to participate in the state the Lifeline program, the program administrator shall send a notice to the participant explaining the participant's Lifeline telephone service benefit will be discontinued after 30 days unless the participant verifies continuing eligibility before that date. The notice shall include the reason(s) for the recipient being ineligible and a description of the options available to the recipient to demonstrate eligibility.

2. At the end of thirty days, if the participant has not demonstrated continuing eligibility, the program administrator shall notify the relevant state ETC to discontinue the ineligible participant's Lifeline telephone service benefit. The benefit must be discontinued in the month following notification; thus the next month's benefit cannot be provided.

3. Ineligible past participants may reapply for the Lifeline program, but must do so by submitting a completed application to the program administrator for state program participation, or to a federal ETC for federal only participation.

D. Participants Switching Between ETCs -- When a current Lifeline telephone service participant desires to change to a different ETC's Lifeline telephone service, the participant and ETCs shall follow the established NLAD procedures. A participant who is not able to complete the switch due to unresolved problems may seek the assistance of the Division of Public Utilities requesting help in resolving the issue.

E. Documentation Retention -- The program administrator shall retain income and program eligibility certification documentation, in electronic format, for as long as required by then current federal Lifeline policies. Copies of the relevant documentation shall be made available on request to auditors from either the federal Lifeline telephone service program or the state Lifeline telephone service program.

R746-341-5. Duties of ETCs.

A. State ETCs

1. Each state ETC shall, at least monthly, send to the program administrator changes in the status of the Lifeline participants to whom the state ETC provides Lifeline telephone service, including:

- a. participants changing residence locations (addresses);
- b. participants switching carriers; or
- c. customers who no longer receive telephone service.

2. The records sent shall contain the full identifying information for each participant as required by the program administrator's policies.

3. Each state ETC shall provide information to potential applicants regarding how to receive an application from the program administrator. This information shall be provided in person, in written format at the ETC's offices, and online at the ETC's website.

4. Each state ETC shall add the Lifeline discount to a customer's account, as directed by the program administrator, within five business days.

5. Each state ETC shall remove the Lifeline discount from a participant's account as directed by the program administrator beginning with the next month's billing cycle following notification of the participant's ineligible status.

6. Each state ETC shall update the NLAD whenever it implements changes in a participants' Lifeline status.

7. If a Lifeline participant seeks to switch service to a different ETC, the program administrator shall be notified by the ETC to which the participant switches. The ETCs shall follow all applicable NLAD procedures to accomplish the participant's desired switch. The new benefit may not be applied until the following month. Each ETC shall update the NLAD to reflect the change in the participant's status.

8. Annually, each state ETC shall send the program administrator a full list of all Lifeline participants, and qualifying individuals if necessary, current as of December 31 of the preceding year. The list shall be provided to the program administrator when the ETC submits the Federal Communication Commission Form 497 for the year in question. The list shall contain the identifying information as required by the program administrator's policies.

9. If a state ETC has a reasonable basis to believe a Lifeline telephone service participant no longer qualifies for Lifeline service, the ETC shall promptly inform the program administrator and provide the documentation, or reason, for its belief.

10. A state ETC shall cooperate with the Division of Public Utilities to resolve Lifeline service complaints the Division brings to the state ETC's attention.

B. Federal ETCs

Each designated federal ETC shall operate in the State of Utah subject to the conditions outlined in the commission order granting ETC status, the applicable provisions of this rule, and in accordance with the federal Lifeline program requirements.

1. Each federal ETC shall update the NLAD to reflect the ETC's initial eligibility verification decision and the participant's Lifeline status whenever the federal ETC adds or removes a Lifeline customer.

2. Each federal ETC shall update the NLAD with all changes in the ETC's participants' Lifeline status.

3. If a Lifeline participant seeks to switch service to a different ETC the program administrator shall be notified by the ETC to which the participant switches. The ETCs shall follow all applicable NLAD procedures to accomplish the participant's desired switch. The new benefit may not be applied until the following month. Each ETC shall update the NLAD to reflect the change in the participant's status.

4. A federal ETC shall cooperate with the Division of Public Utilities to resolve Lifeline service complaints the Division of Public Utilities brings to a federal ETC's attention.

R746-341-6. State Lifeline Telephone Service Features.

A. Discounts -- Lifeline telephone service provided by state ETCs shall consist of dial tone line, usage charges or their equivalent, and authorized Extended Area Service (EAS) charges, less a discount of \$3.50 and all other matching funds established by the Federal Communication Commission.

B. Service Characteristics -- State Lifeline telephone service shall include all features listed in Utah Code Ann. Section 54-8b-2(2).

C. Deposits -- When customer security deposits are otherwise required they shall be waived for Lifeline telephone service participants if the customer voluntarily elects to receive toll blocking.

D. Nonrecurring Charge Waiver -- Lifeline telephone service participants shall receive a waiver of the nonrecurring service charge for changing the type of local exchange usage service to Lifeline service, or changing from flat rate service to message rate service, or vice versa, but only one such waiver shall be allowed during a given 12-month period.

E. Disconnection -- Lifeline telephone service shall not be disconnected for nonpayment of toll service.

F. Restrictions -- Lifeline telephone service shall be subject to the following restrictions:

1. Lifeline telephone service shall only be provided to the

applicant's principal residence.

2. A Lifeline telephone service participant shall only receive a Lifeline discount on one single residential access line.

G. Other Services -- A Lifeline telephone service participant may not be required to purchase other services from the state ETC, nor prohibited from purchasing other services unless the participant has failed to comply with the state ETC's terms and conditions for those services.

R746-341-7. Federal Lifeline Telephone Service Features.

Federal Lifeline telephone service consists of those features and conditions set forth in the applicable commission docket in which the federal ETC status was granted, as modified by subsequent orders and R746-341.E

R746-341-8. State ETC Reporting Requirements.

Reporting Requirements -- State ETCs shall submit, to the Division of Public Utilities, a semi-annual report, for the periods through June 30 and December 31, of each year, containing a description of the state ETC's Lifeline program. The reports shall also contain monthly information on:

- A. the forgone revenue resulting from the discounts provided to Lifeline participants, if any;
- B. the amounts of administrative expenses;
- C. interest accrual amounts on Lifeline funds, if any;
- D. the number of Lifeline telephone service participants by exchange area per month; and
- E. a detailed report of outreach efforts.

R746-341-9. Funding of Lifeline.

Cost Recovery -- The total cost of providing the state portion of Lifeline telephone service, including commission approved administrative costs of the state ETCs and the costs incurred by the program administrator, shall be recovered and funded as provided in Utah Code Ann. Section 54-8b-15.

R746-341-10. Collection and Disbursement of Lifeline Funds.

State ETC Payment -- Within 30 days after the review audit of a state ETC's semi-annual report by the Division of Public Utilities results in a favorable recommendation, the Public Service Commission shall disburse an amount equal to the ETC's semi-annual Lifeline program expenses and Lifeline discounts granted. For amounts the Division of Public Utilities disallows, the state ETC may petition the Commission to open a docket to examine the reasonableness of the denied amounts.

KEY: telephone, telecommunications, rules and procedures, lifeline rates

August 6, 2014

54-4-1

Notice of Continuation October 18, 2010

54-4-4

**R765. Regents (Board of), Administration.
R765-604. New Century Scholarship.**

R765-604-1. Purpose.

To provide policy and procedures for the administration of the New Century Scholarship which was established to encourage students to accelerate their education by earning an associate's degree in high school from an institution within the Utah System of Higher Education.

R765-604-2. References.

- 2.1. 53B-8-105, Utah Code Annotated 1953
- 2.2. Regents' Policy and Procedures R609, Regents' Scholarship

R765-604-3. Definitions.

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the Utah State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents, or a home-school student.

3.2. "Associate's Degree" means an Associate of Arts, Associate of Science, or Associate of Applied Science degree received from, or verified by, a regionally accredited institution within the Utah System of Higher Education. If the institution does not offer the above listed degrees, equivalent academic requirements will suffice under subsection 3.5.2. of this rule.

3.3. "Awards" means New Century Scholarship funds.

3.4. "Board" means the Utah State Board of Regents.

3.5. "Completes the requirements for an associate's degree" means that an applicant completes either of the following:

3.5.1. all the required courses for an associate's degree from an institution within the Utah System of Higher Education that offers associate's degrees; and applies for the associate's degree from the institution; or

3.5.2. all the required courses for an equivalency to the associate's degree from a higher education institution within the Utah System of Higher Education that offers baccalaureate degrees but does not offer associate's degrees.

3.6. "High school" means a public high school established by the Utah State Board of Education or a private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

3.7. "High school graduation date" means the day on which the recipient's class graduates from high school. For home-schooled students refer to subsection 4.2.1 of this rule.

3.8. "Home-schooled" refers to a student who has not graduated from a Utah high school and received a high school grade point average (GPA).

3.9. "Math and science curriculum" means the rigorous math and science curriculum developed and approved by the Board which, if completed, qualifies a high school student for an award. Curriculum requirements can be found at the Web site of the Utah System of Higher Education.

3.10. "New Century Scholarship" means a renewable scholarship to be awarded to applicants who complete the eligibility requirements of Section 4 of this rule.

3.11. "Reasonable progress" means enrolling and completing at least fifteen credit hours during fall and spring semesters and earning a 3.3 grade point average or higher each semester. If applicable, applicants attending summer must enroll full-time according to their institution and or program policy regarding full-time status.

3.12. "Recipient" means an applicant who receives an award under the requirements set forth in this rule.

3.13. "Renewal Documents" means a college transcript demonstrating that the recipient has met the required semester

grade point average and a detailed schedule providing proof of enrollment in fifteen credit hours for the semester which the recipient is seeking award payment.

3.14. "Scholarship Review Committee" means the committee to review New Century Scholarship applications and make final decisions regarding awards.

3.15. "The Utah System of Higher Education" means the institutions that comprise Utah's public higher education institutions including the University of Utah, Utah State University, Weber State University, Southern Utah University, Utah Valley University, Dixie State University, Salt Lake Community College, and Snow College.

R765-604-4. Recipient Requirements.

4.1. General Academic Requirements: Unless an exception applies, to qualify as a recipient a student shall:

4.1.1. complete the requirements for an associate's degree or the math and science curriculum at a regionally accredited institution within the Utah System of Higher Education

4.1.1.1. with at least a 3.0 grade point average

4.1.1.2. by applicant's high school graduation date; and

4.1.2. complete the high school graduation requirements of a Utah high school with at least a 3.5 cumulative grade point average.

4.2. Utah Home-schooled Applicants: For Utah home-schooled applicants the following requirement applies:

4.2.1. If a home-schooled applicant would have completed high school in 2011 or after, the high school graduation date (under subsection 4.1.1.2.) is June 15 of the year the applicant would have completed high school.

4.2.2. ACT Composite Score Requirement: A composite ACT score of 26 or higher is required in place of the high school grade point average requirement (under subsection 4.1.2).

4.3. Mandatory Fall Term Enrollment: A recipient shall enroll in and successfully complete fifteen credit hours at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral or leave of absence from the Board under subsection 8.7 of this rule.

4.4. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.5. No Criminal Record Requirement: A recipient shall not have a criminal record, with the exception of a misdemeanor traffic citation.

4.6. Regents' Scholarship: A recipient shall not receive both an award and the Regents' Scholarship established in Utah Code Section 53B-8-108.

R765-604-5. Application Procedures.

5.1. Application Contact: Qualifying students shall apply for the award through the Board.

5.2. General procedure: An application for an award shall contain the following:

5.2.1. Application Form: the official application will become available on the New Century Web site each November prior to the February 1 deadline; and

5.2.2. College Transcript: an official college transcript showing college courses, Advanced Placement and transfer work an applicant has completed to meet the requirements for the associate's degree and verification of the date the award was earned; and

5.2.3. High School Transcript: an official high school transcript with high school graduation dated posted (if applicable).

5.2.4. ACT Score: a copy of the student's verified ACT score (if applicable).

5.3. Registrar Verification: If an applicant is enrolled at an

institution which does not offer an associate's degree or an institution that will not award the associate's degree until the academic on-campus residency requirement has been met, the registrar must verify that the applicant has completed the equivalent academic requirements under 4.1.1.

5.4. Application Deadline: Applicants shall meet the following deadlines to qualify for an award:

5.4.1. Application Submission: Applicants must submit a scholarship application to the Scholarship Review Committee no later than February 1 of the year of their high school graduation date or the year they would have graduated from high school.

5.4.2. Support Documentation Submission: All necessary support documentation shall be submitted on or before September 1 following the applicant's high school graduation date. In some cases exceptions may be made as Advanced Placement and transfer work verification may be delayed at an institutional level and no fault of the applicant. Scholarship awards may be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all coursework and GPA requirements or if any information, including the attestation of criminal record and citizenship status, proves to be falsified, awards may be denied.

5.4.3. Priority Deadline: A priority deadline may be established each year. Applicants who meet the priority deadline may be given first priority of consideration for awards.

5.5. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, will not be considered, and may result in failure to meet a deadline.

R765-604-6. Awards.

6.1. Value of the Award: The award is up to the amount provided by the law and determined each Spring by the Board based on legislative funding and number of applicants. The total value may change in accordance with subsection 6.2. The award shall be disbursed semester-by-semester over the shortest of the following time periods:

6.1.1. Four semesters of full-time enrollment in fifteen credit hours.

6.1.2. Sixty credit hours.

6.1.3. Until the student meets the requirements for a baccalaureate degree.

6.2. The Board May Decrease Award: If the appropriation from the Utah Legislature for the scholarship is insufficient to cover the costs associated with the scholarship, the Board may reduce or limit the award.

6.3. Eligible Institutions: An award may be used at either

6.3.1. Public Institution: a four-year institution within the Utah System of Higher Education that offers baccalaureate programs; or

6.3.2. Private Nonprofit Institution: a private not-for-profit higher education four-year institution in the state of Utah accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

6.4. Enrollment at Multiple Institutions: The award may be used at more than one of the eligible institutions within the same semester for the academic year 2010-11. Starting in 2011 when the award goes to a flat rate the award may only be used at the institution from which the student is earning a baccalaureate degree.

6.5. Student Transfer: The award may be transferred to a different eligible institution upon request of the recipient.

6.6. Financial Aid and other Scholarships: With the exception of the Regents' Scholarship (as detailed in subsection 4.6 of this policy) tuition waivers, financial aid, or other scholarships will not affect a recipient's total award amount.

R765-604-7. Disbursement of Award.

7.1. Disbursement Schedule of Award: The award shall be disbursed semester-by-semester over the shortest of the following time periods:

7.1.1. Four semesters of enrollment in fifteen credit hours;

7.1.2. Sixty credit hours; or

7.1.3. Until the recipient meets the requirements for a baccalaureate degree.

7.2. Enrollment Documentation: The recipient shall submit to the Scholarship Review Committee a copy of a class schedule verifying that the recipient is enrolled in fifteen credit hours or more at an eligible institution. Documentation must include the student's name, the semester the recipient will attend, institution that they are attending and the number of credits for which the recipient is enrolled.

7.3. Award Payable to Institution: The award will be made payable to the institution. The institution shall pay over to the recipient any excess award funds not required for tuition payments. Award funds should be used for higher education expenses including tuition, fees, books, supplies, and equipment required for instruction.

7.4. Dropped Hours After Award: If a recipient drops credit hours after having received the award which results in enrollment below fifteen credit hours the scholarship will be revoked (see 8.1) unless the student needs fewer than fifteen credit hours for completion of a degree.

R765-604-8. Continuing Eligibility.

8.1. Reasonable Progress Toward Degree Completion: The Board may cancel a recipient's scholarship if the student fails to:

8.1.1. Maintain 3.3 GPA: to maintain a 3.3 GPA or higher for each semester for which the student has received awards.; or

8.1.2. Reasonable Progress: to make reasonable progress (fifteen credit hours) toward the completion of a baccalaureate degree and submit the documentation by the deadline as described in subsection 8.2. A recipient must apply and receive an approved deferral or leave of absence under subsection 8.7 if he or she will not enroll in fifteen credit hours continuously for fall and spring semesters.

8.2. Duty of Student to Report Reasonable Progress: Each semester, the recipient must submit to the Board a copy of his or her grades for verification of grade point average and has completed a minimum of fifteen credit hours each semester. Recipients will not be paid for the coming semester until the requested documentation has been received. If the recipient at any time fails to maintain a 3.3 grade point average or higher following probation or fails to enroll and complete fifteen credit hours, the scholarship may be revoked. These documents must be submitted by the following dates:

8.2.1. Proof of enrollment for Fall Semester and proof of completion of the previous semester must be submitted by September 30.

8.2.2. Proof of enrollment for Spring Semester and proof of completion of the previous semester must be submitted by February 15.

8.2.3. Proof of enrollment for Summer Semester and proof of completion of the previous semester must be submitted by June 30.

8.2.4. Proof of enrollment if you are attending Brigham Young University during Winter Semester and proof of completion of the previous semester must be submitted by February 15.

8.2.5. Proof of enrollment if you are attending Brigham Young University during Spring Term and proof of completion of the previous semester must be submitted by May 30.

8.2.6. Proof of enrollment if you are attending Brigham Young University during Summer Term and proof of completion of the previous semester or term must be submitted by July 30.

8.3. Probation: If a recipient earns less than a 3.3 GPA in any single semester, the recipient must earn a 3.3 GPA or better the following semester to maintain eligibility for the scholarship. If the recipient again at any time earns less than a 3.3 GPA the scholarship will be revoked.

8.4. Final Semester: A recipient will not be required to enroll in fifteen credit hours if the recipient can complete the degree program with fewer credits.

8.5. No Awards After Five Years: The Board will not make an award to a recipient for an academic term that begins more than five years after the recipient's high school graduation date.

8.6. No Guarantee of Degree Completion: An award does not guarantee that the recipient will complete his or her baccalaureate program within the recipient's scholarship eligibility period.

8.7. Deferral or Leave of Absence.

8.7.1. A recipient shall apply to the Board for a deferral of award or a leave of absence if they do not continuously enroll in fifteen credit hours.

8.7.2. A deferral or leave of absence will not extend the time limits of the scholarship under subsection 8.5.

8.7.3. Deferrals or leaves of absence may be granted, at the discretion of the Board, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

R765-604-9. Appeals.

9.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant will receive a letter informing the applicant of the decision on his/her application.

9.2. Appeals: Applicants and recipients have the right to appeal an adverse decision.

9.2.1. Appeals shall be postmarked within 30 days of date of notification by submitting a completed Appeal Application found on the program Web site.

9.2.2. An appeal filed before the applicant/recipient receives official notification from the Scholarship Review Committee regarding their application, will not be considered.

9.2.3. The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the applicant/recipient met all scholarship requirements and submitted all requested documentation by the deadline.

9.2.4. Appeals are not accepted for late document submission.

9.2.5. A submission of an appeal does not guarantee a reversal of the original decision.

9.2.6. It is the applicant/recipient's responsibility to file the appeal, including all supplementary documentation. All documents shall be mailed to the New Century Scholarship address.

9.2.7. Appeals will be reviewed and decided by an appeals committee appointed by the commissioner of higher education.

**KEY: higher education, secondary education, scholarships
July 8, 2013 53B-8-105
Notice of Continuation August 26, 2014**

R865. Tax Commission, Auditing.**R865-19S. Sales and Use Tax.****R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.**

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or
2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

(1) For purposes of this rule, "item" includes:

- (a) an admission;
- (b) a product transferred electronically;
- (c) a service; and
- (d) tangible personal property.

(2)(a) An invoice or receipt issued by a seller shall separately state the sales tax collected on the invoice or receipt.

(b) If an invoice or receipt issued by a seller does not show the sales tax collected as required in Subsection (2)(a), sales tax will be assessed on the seller or purchaser based on the amount of the invoice or receipt.

(3) Unless otherwise provided by statute, if a purchase consists of items that are exempt from sales tax and items that are subject to sales tax, the entire purchase is subject to sales tax unless the seller, at the time of the transaction:

- (a) separately states the tax exempt items on the invoice; or
- (b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items exempt from sales tax.

(4) Unless otherwise provided by statute, if a purchase consists of two or more items that are subject to sales tax at different rates, the entire purchase is subject to sales tax at the higher tax rate unless the seller, at the time of the transaction:

- (a) separately states on the invoice the items subject to sales tax at each of the different sales tax rates; or
- (b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items subject to sales tax at the lower tax rate.

(5) A seller that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the seller collected the excess or remit the excess to the commission.

(a) A seller may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

(b) A seller may not offset an underpayment of tax on the seller's purchases against an excess of tax collected.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of

business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;
2. of a change of character of the business; or
3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;
2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;
3. the person fails to renew its annual business license with the Department of Commerce; or
4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

(1)(a) Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

(b) The return filed by a remote seller under Section 59-12-107(4) shall be the return the seller would have filed if the seller were not a remote seller.

(2) If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

(3) If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

(4) Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

(a) New businesses that expect annual sales and use tax liability less than \$1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

(b)(i) Businesses currently assigned a quarterly filing status, in good standing and reporting less than \$1,000 in tax for the preceding calendar year may be changed to annual filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

(c)(i) Businesses assigned an annual filing status reporting in excess of \$1,000 for a calendar year, will be changed to quarterly filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

(5) Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of \$1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to

Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or
2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in

connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

- (a) the application being performed;
- (b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output

procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for

purposes of Subsections 59-12-104(13) and (17).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;
2. the purchase price of the vehicle;
3. the value allowed for the trade-in vehicle;
4. the net difference between the vehicle traded and the vehicle purchased;
5. the signature of the seller; and
6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) Subject to Subsection (1)(b), a lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(b) Fuel charges in a transaction for the lease or rental of a motor vehicle are not subject to sales tax pursuant to Subsection 59-12-104(1) if the fuel charges are:

- (i) optional; and
- (ii) separately stated on the invoice.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

- (a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and
- (b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1)(a) "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether

such charge is designated as a cover charge, minimum charge, or any such similar charge.

(b) This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

(2) "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

(3) "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

(4) If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

(5) Annual membership dues may be paid in installments during the year.

(6) Amounts paid for the following activities are not admissions or user fees:

(a) lessons, public or private;

(b) sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

(c) sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for

industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not

regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:

(i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(8) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Purchases by the State of Utah, Its Institutions, and Its Political Subdivisions Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-104.6.

(1) "Lodging related purchase" is as defined in Section 59-12-104.6.

(2) A purchase made by the state, its institutions, or its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts is exempt from tax if the purchase is for use in the exercise of an essential governmental function.

(3) A purchase is considered made by the state, its institutions, or its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with the employee's own funds and is reimbursed by the state or local entity, that purchase is not made by the state or local entity and does not qualify for the exemption.

(4) An entity that qualifies under Subsections (2) and (3) for an exemption from sales and sales-related tax on a lodging related purchase:

(a) may not receive that exemption at the point of sale; and
(b) may apply for a refund of tax paid on forms provided by the commission.

(5) An entity that applies for a refund of sales and sales-related tax paid under Subsection (4)(b) shall:

(a) retain a copy of a receipt or invoice indicating:

(i) the amount of sales and sales-related tax paid for each purchase for which a refund of tax paid is claimed; and

(ii) the purchase was paid for directly by the entity; and

(b) maintain original records supporting the refund request for three years following the date of the refund and provide those records to the commission upon request.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;
2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or
3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

- (a) to produce or care for agricultural products that are for sale;
- (b) to feed or care for working dogs and working horses in agricultural use;
- (c) to feed or care for animals that are marketed.
- (3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.
- (4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;
2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

- (a) "Construction materials" include items of tangible

personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987

Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of

people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of

people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the

marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two \$6 meals, but the value of the free meal is limited to \$5, the \$12 is rung up and the \$5 deducted, resulting in a taxable sale of \$7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for \$8,500 and a credit of \$6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or \$2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and

when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed \$1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

- a) acquisition costs of materials and packaging, including freight;
- b) direct manufacturing labor; and
- c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, and Car Washers Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Service Plan Charges for Labor and Repair Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) "Service plan" includes an extended warranty agreement or other prepaid arrangement.

(2)(a) Service plan charges for a future taxable repair are subject to sales tax.

(b) Sales tax must also be collected on any deductible charged to a customer for the customer's share of the repair done under the service plan.

(3)(a) Service plan charges for items of tangible personal property that are converted to real property are not taxable.

(b) Service plan charges for items of tangible personal property that are permanently attached to real property are treated as follows:

(i) service plan charges for labor are not taxable; and

(ii) service plan charges for parts are taxable unless those parts are exempt under Title 59, Chapter 12, Part 1, Tax Collection.

(4) Rule R865-19S-58 outlines the sales tax responsibility of a person that converts tangible personal property to real property.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and

(E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

(i) charges for printed material, even though the paper may be furnished by the customer;

(ii) charges for envelopes;

(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;

(iv) charges for pre-press materials purchased tax exempt by the printer; and

(v) charges for reprints and proofs.

(b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

(i) the sale qualifies for exemption under Section 59-12-104; and

(ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created

upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

- cash;
- wire transfer; or
- cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a \$50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the \$50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a \$50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The

EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

R865-19S-90. Telecommunications Service Pursuant to Utah Code Ann. Section 59-12-103.

(1) Taxable telecommunications service charges include subscriber access fees.

(2) Nontaxable telecommunications charges include:

(a) refundable subscriber deposits, interest, and late payment penalties;

(b) charges for interstate calls;

(c) telecommunications answering services received or relayed by a human operator;

(d) charges to repair subscriber equipment that is regarded as real property; and

(e) charges levied on subscribers to fund or subsidize special telecommunications services, including 911 service, special communications services for the deaf, and special telecommunications service for low income subscribers.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;
2. The person identifies himself as a purchasing agent for the government entity;
3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;
4. The transaction is approved by the government entity; and
5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-211.

(1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

(2) The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

(3) The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

(4)(a) The provisions for determining the location of a transaction under Subsection (4)(b) apply if:

- (i) a purchaser uses computer software;
- (ii) there is not a transfer of a copy of the computer software to the purchaser; and
- (iii) the purchaser uses the computer software at more than one location.

(b) The location of a transaction described in Subsection (4)(a) is:

(i) if the seller is required to collect and remit tax to the commission for the purchase, and the purchaser provides the seller at the time of purchase a reasonable and consistent method for allocating the purchase to multiple locations, the location determined by applying that reasonable and consistent method of allocation; or

(ii) if the seller is required to collect and remit tax to the commission for the purchase, and the seller does not receive information described in Subsection (4)(b)(i) from the purchaser at the time of the purchase, the location determined in

accordance with Subsections 59-12-211(4) and (5); or

(iii) if the purchaser accrues and remits sales tax to the commission for the purchase, the location determined:

(A) by applying a reasonable and consistent method of allocation; or

(B) in accordance with Subsections 59-12-211(4) and (5).

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Tips, Gratuities, and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.

(1) Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill that are required to be paid.

(a) Tax on the required gratuity is due from a private club, even though the club is not open to the public.

(b) Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

(2) Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is

infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

- (a) inspected in this state; or
- (b) tested for functionality in this state.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

(1) Definitions.

(a) "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

(b) "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

(2) Except as provided in Subsection (3), the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

(3) If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

(4) The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

(5) An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

(6) A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

(7) A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the commission:

(a) on forms provided by the commission, and

(b) at the time and in the manner sales and use tax is remitted to the commission.

(8) A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

(a) the name and address of the user of the taxable energy;

(b) the volume of taxable energy delivered to the user; and

(c) the entity from which the taxable energy was purchased.

(9) The information required under Subsection (8) shall be provided to the commission:

(a) for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value; and

(b)(i) except as provided in Subsection (9)(b)(ii), at the time the person delivering the taxable energy files sales and use tax returns with the commission; or

(ii) if the person delivering the taxable energy files an annual information return under Subsection 10-1-307(5), at the time that annual information return is filed with the commission.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The \$75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1)(a) Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

(b) Except as provided in Subsection (5), a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

(2) Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

(3) The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

(a) For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with Subsection (1).

(b) For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with Subsection (2).

(4) A veterinarian is not required to collect sales and use tax on:

- (a) medical services;
- (b) boarding services; or
- (c) grooming services required in connection with a medical procedure.

(5) Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

(a) the sales are exempt from sales and use tax under Section 59-12-104; and

(b) the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) Graphic design services are not subject to sales and use tax:

- (a) if the graphic design is the object of the transaction;

and

(b) even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

(2) Except as provided in Subsection (3), if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

(a) there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

(b) the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

(3) A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

R865-19S-113. Sales Tax Obligations of Aircraft and Boat Tour Operators, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (2) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(3) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

- A. "Clothing" includes:
1. aprons for use in a household or shop;
 2. athletic supporters;
 3. baby receiving blankets;
 4. bathing suits and caps;
 5. beach capes and coats;
 6. belts and suspenders;
 7. boots;
 8. coats and jackets;
 9. costumes;
 10. diapers, including disposable diapers, for children and adults;
 11. ear muffs;
 12. footlets;
 13. formal wear;
 14. garters and garter belts;
 15. girdles;
 16. gloves and mittens for general use;
 17. hats and caps;
 18. hosiery;
 19. insoles for shoes;
 20. lab coats;
 21. neckties;
 22. overshoes;
 23. pantyhose;
 24. rainwear;
 25. rubber pants;

- 26. sandals;
 - 27. scarves;
 - 28. shoes and shoe laces;
 - 29. slippers;
 - 30. sneakers;
 - 31. socks and stockings;
 - 32. steel toed shoes;
 - 33. underwear;
 - 34. uniforms, both athletic and non-athletic; and
 - 35. wearing apparel.
- B. "Clothing" does not include:
- 1. belt buckles sold separately;
 - 2. costume masks sold separately;
 - 3. patches and emblems sold separately;
 - 4. sewing equipment and supplies, including:
 - a) knitting needles;
 - b) patterns;
 - c) pins;
 - d) scissors;
 - e) sewing machines;
 - f) sewing needles;
 - g) tape measures; and
 - h) thimbles; and
 - 5. sewing materials that become part of clothing, including:
 - a) buttons;
 - b) fabric;
 - c) lace;
 - d) thread;
 - e) yarn; and
 - f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Protective equipment" includes:

- A. breathing masks;
- B. clean room apparel and equipment;
- C. ear and hearing protectors;
- D. face shields;
- E. hard hats;
- F. helmets;
- G. paint or dust respirators;
- H. protective gloves;
- I. safety glasses and goggles;
- J. safety belts;
- K. tool belts; and
- L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:

- A. ballet and tap shoes;
- B. cleated or spiked athletic shoes;
- C. gloves, including:
 - (i) baseball gloves;
 - (ii) bowling gloves;
 - (iii) boxing gloves;
 - (iv) hockey gloves; and
 - (v) golf gloves;
- D. goggles;
- E. hand and elbow guards;
- F. life preservers and vests;
- G. mouth guards;
- H. roller skates and ice skates;
- I. shin guards;
- J. shoulder pads;
- K. ski boots;
- L. waders; and
- M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

- A. The computation of sales and use tax must be:
 - 1. carried to the third place; and
 - 2. rounded to a whole cent pursuant to B.
- B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.
- C. Sellers may compute the tax due on a transaction on an:
 - 1. item basis; or
 - 2. invoice basis.
- D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:

- 1. monthly; and
 - 2. by electronic funds transfer to the municipality that imposes the tax.
- B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.
- C. The commission shall charge a municipality for the commission's services in an amount:
 - 1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and
 - 2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.
- D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

- (a) land;
- (b) buildings;
- (c) raw materials;

- (d) supplies;
- (e) film;
- (f) services;
- (g) transportation;
- (h) gas, electricity, and other fuels;
- (i) admissions or user fees; and
- (j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

- (a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and
- (b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(2) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-122. Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(c) "New or expanding establishment" means:

(i)(A) the creation of a new web search portal establishment in this state; or

(B) the expansion of an existing Utah web search portal

establishment if the expanded establishment increases services or is substantially different in nature, character, or purpose from the existing Utah web search portal establishment.

(ii) The operator of a web search portal establishment who closes operations at one location in this state and reopens the same establishment at a new location does not qualify as a new or expanding establishment without demonstrating that the move meets the conditions set forth in Subsection (1)(c)(i).

(2) The exemption for certain purchases by a web search portal establishment does not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107.

For purposes of determining the amount of sales tax due in specie legal tender and in dollars for a purchase made in specie legal tender, if the London fixing price is not available for a day on which a purchase is made in specie legal tender, a seller shall use the latest available London fixing price for the specie legal tender the purchaser paid that precedes the date of the purchase.

KEY: charities, tax exemptions, religious activities, sales tax August 28, 2014

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R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the

industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or

any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;

- (b) the address of the property; and
- (c) the serial number of the property.
- (3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

- (1) Definitions:
 - (a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.
 - (b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.
 - (c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.
 - (d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.
 - (e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.
 - (f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.
 - (g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.
 - (h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.
 - (i) All definitions contained in Section 11-13-103 apply to this rule.
- (2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.
 - (a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.
 - (b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total

shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program

are:

- (i) Course 101 - Basic Appraisal Principles;
- (ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);
- (iii) Course 501 - Assessment Practice in Utah;
- (iv) Course 502 - Mass Appraisal of Land;
- (v) Course 503 - Development and Use of Personal Property Schedules;
- (vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and
- (vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

- (i) successfully complete courses 501 and 502;
- (ii) successfully complete a comprehensive residential field practicum; and
- (iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

- (i) successfully complete courses 501, 502, and 505;
- (ii) successfully complete a comprehensive field practicum including residential and commercial properties; and
- (iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

- (i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

- (i) successfully complete courses 501 and 504;
- (ii) successfully complete a comprehensive valuation practicum; and
- (iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

- a) creation of a new facility;
- b) acquisition of personal property; or
- c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of

this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the

cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown

parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3, as well as tax increment distributions and related taxable values of redevelopment renewal agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to

the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

- (i) a net annexation value less than zero; and
- (ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of

central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to

the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b). (c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2014 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources

to determine cost new:

- (A) documented actual cost of the new or used vehicle; or
- (B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

- (A) class 6 heavy and medium duty trucks;
- (B) class 13 heavy equipment;
- (C) class 14 motor homes;
- (D) class 17 vessels equal to or greater than 31 feet in length; and
- (E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

- (i) an all-terrain vehicle;
- (ii) a camper;
- (iii) an other motorcycle;
- (iv) an other trailer;
- (v) a personal watercraft;
- (vi) a small motor vehicle;
- (vii) a snowmobile;
- (viii) a street motorcycle;
- (ix) a tent trailer;

- (x) a travel trailer; and
- (xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (A) retail price of the canned computer software;
- (B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
- (C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
13	71%
12	42%
11 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

- (A) The equipment is sold as a single unit. If the invoice

breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

(A) CNC mills;

(B) CNC lathes;

(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
13	90%
12	81%
11	71%
10	59%
09	49%
08	38%
07	27%
06 and prior	14%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

(A) office machines;

(B) alarm systems;

(C) shopping carts;

(D) ATM machines;

(E) small equipment rentals;

(F) rent-to-own merchandise;

(G) telephone equipment and systems;

(H) music systems;

(I) vending machines;

(J) video game machines; and

(K) cash registers and point of sale equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
13	84%
12	69%
11	54%
10	35%
09 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks;

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides; and

(J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
13	91%
12	83%
11	75%
10	64%
09	55%
08	45%
07	36%
06	25%
05 and prior	13%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2014 percent good applies to 2014 models purchased in 2013.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
14	90%
13	71%
12	65%
11	60%
10	54%
09	48%
08	42%
07	37%
06	31%
05	25%
04	20%
03	14%
02	8%
01 and prior	3%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

(A) medical and dental equipment and instruments;

(B) exam tables and chairs;

(C) microscopes; and

(D) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
13	93%
12	87%
11	80%

10	70%
09	64%
08	57%
07	50%
06	42%
05	34%
04	23%
03 and prior	12%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

- (I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
- (II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
13	93%
12	87%
11	80%
10	71%
09	64%
08	57%
07	50%
06	42%
05	34%
04	23%
03 and prior	12%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway

vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
13	94%
12	90%
11	86%
10	78%
09	73%
08	68%
07	64%
06	59%
05	54%
04	47%
03	38%
02	29%
01	19%
00 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
13	62%
12	46%
11	21%
10	9%
09 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2014 model equipment purchased in 2013 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
13	50%
12	47%
11	44%
10	42%

09	39%
08	36%
07	33%
06	30%
05	27%
04	24%
03	21%
02	18%
01	16%
00 and prior	12%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The 2014 percent good applies to 2014 models purchased in 2013.

(iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
14	90%
13	68%
12	64%
11	60%
10	56%
09	53%
08	49%
07	45%
06	41%
05	37%
04	33%
03	29%
02	25%
01	22%
00	18%
99	14%
98 and prior	10%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;
- (C) wire bonding equipment;
- (D) encapsulation equipment;
- (E) semiconductor test equipment;
- (F) clean room equipment;
- (G) chemical and gas systems related to semiconductor manufacturing;
- (H) deionized water systems;
- (I) electrical systems; and
- (J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
13	47%
12	34%
11	24%
10	15%
09 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboards;
- (B) sign towers;

- (C) radio towers;
 - (D) ski lift and tram towers;
 - (E) non-farm grain elevators; and
 - (F) bulk storage tanks.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
13	96%
12	93%
11	91%
10	85%
09	82%
08	80%
07	78%
06	75%
05	74%
04	70%
03	64%
02	57%
01	50%
00	44%
99	37%
98	30%
97	23%
96	15%
95 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

- (A) houseboats equal to or greater than 31 feet in length;
- (B) sailboats equal to or greater than 31 feet in length; and
- (C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

- (A) is not included in Class 17;
- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

- (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

- (aa) the manufacturer's suggested retail price for comparable property; or
- (bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2014 percent good applies to 2014 models purchased in 2013.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
14	90%
13	63%
12	61%
11	58%

10	56%
09	53%
08	51%
07	48%
06	46%
05	43%
04	41%
03	38%
02	36%
01	33%
00	31%
99	28%
98	26%
97	24%
96	21%
95	19%
94	16%
93 and prior	12%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
13	92%
12	83%
11	81%
10	75%
09	71%
08	66%
07	61%
06	56%
05	50%
04	42%
03	32%
02	21%
01 and prior	11%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

- (A) dry freight van trailers;
- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state

assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2014 percent good applies to 2014 models purchased in 2013.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
14	95%
13	90%
12	85%
11	80%
10	75%
09	70%
08	65%
07	59%
06	54%
05	49%
04	44%
03	39%
02	34%
01	29%
00	24%
99	18%
98 and prior	13%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
13	94%
12	88%
11	82%
10	77%
09	71%
08	65%
07	59%
06	54%
05	48%
04	42%
03	36%
02 and prior	30%

91	40%
90	38%
89	35%
88	32%
87	30%
86	27%
85	25%
84	22%
83	19%
82	17%
81	14%
80	12%
79 and prior	9%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

- (i) Examples of property in this class include:
 - (A) aircraft parts manufacturing jigs and dies;
 - (B) aircraft parts manufacturing molds;
 - (C) aircraft parts manufacturing patterns;
 - (D) aircraft parts manufacturing taps and gauges; and
 - (E) aircraft parts manufacturing test equipment.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
13	84%
12	70%
11	54%
10	36%
09	20%
08 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

- (i) Examples of property in this class include:
 - (A) electrical power generators; and
 - (B) control equipment.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
13	97%
12	95%
11	92%
10	90%
09	87%
08	84%
07	82%
06	79%
05	77%
04	74%
03	71%
02	69%
01	66%
00	64%
99	61%
98	58%
97	56%
96	53%
95	51%
94	48%
93	45%
92	43%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

- (i) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less; and
- (ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
13	75%
12	50%
11	25%
10 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2014.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

- (a) the owner of record of the property;
- (b) the property parcel, account, or serial number;
- (c) the location of the property;
- (d) the tax year in which the exemption was originally granted;
- (e) a description of any change in the use of the real or personal property since January 1 of the prior year;
- (f) the name and address of any person or organization conducting a business for profit on the property;
- (g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
- (h) a description of any personal property leased by the owner of record for which an exemption is claimed;
- (i) the name and address of the lessor of property described in Subsection (2)(h);
- (j) the signature of the owner of record or the owner's authorized representative; and
- (k) any other information the county may require.

(3) The annual statement shall be filed:

- (a) with the county legislative body in the county in which the property is located;
- (b) on or before March 1; and
- (c) using:
 - (i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
 - (ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;
2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;
3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and
4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

- (i) company homes occupied by superintendents and other employees on 24-hour call;
 - (ii) storage facilities for railroad operations;
 - (iii) communication facilities; and
 - (iv) spur tracks outside of RR-ROW.
- (d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified

as nonoperating and therefore assessed by the local county assessor. Some examples are:

- (i) land leased to service station operations;
 - (ii) grocery stores;
 - (iii) apartments;
 - (iv) residences; and
 - (v) agricultural uses.
- (f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

- (a) If an audit reveals an incorrect assignment of property,

or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;
(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine

maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(A) the owner of record of the property;

(B) the property parcel number;

(C) the location of the property;

(D) the basis of the owner's knowledge of the use of the property;

(E) a description of the use of the property;

(F) evidence of the domicile of the inhabitants of the property; and

(G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

(A) on a form provided by the county; or

(B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2014 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	820
2)	Cache	707
3)	Carbon	525
4)	Davis	870
5)	Emery	504
6)	Iron	801
7)	Kane	422
8)	Millard	804
9)	Salt Lake	710
10)	Utah	755
11)	Washington	659
12)	Weber	808

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1) Box Elder	720
2) Cache	603
3) Carbon	418
4) Davis	764
5) Duchesne	490
6) Emery	406
7) Grand	389
8) Iron	701
9) Juab	450
10) Kane	324
11) Millard	705
12) Salt Lake	610
13) Sanpete	542
14) Sevier	567
15) Summit	466
16) Tooele	456
17) Utah	653
18) Wasatch	492
19) Washington	561
20) Weber	709

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1) Beaver	574
2) Box Elder	567
3) Cache	458
4) Carbon	277
5) Davis	615
6) Duchesne	344
7) Emery	255
8) Garfield	213
9) Grand	245
10) Iron	557
11) Juab	303
12) Kane	179
13) Millard	558
14) Morgan	391
15) Piute	336
16) Rich	179
17) Salt Lake	464
18) San Juan	181
19) Sanpete	397
20) Sevier	422
21) Summit	317
22) Tooele	305
23) Uintah	375
24) Utah	501
25) Wasatch	342
26) Washington	413
27) Wayne	332
28) Weber	564

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1) Beaver	472
2) Box Elder	468
3) Cache	355
4) Carbon	178
5) Daggett	195
6) Davis	514
7) Duchesne	241
8) Emery	158
9) Garfield	115
10) Grand	149
11) Iron	455
12) Juab	201
13) Kane	82
14) Millard	454
15) Morgan	289
16) Piute	235
17) Rich	83
18) Salt Lake	360
19) San Juan	83
20) Sanpete	298

21) Sevier	324
22) Summit	220
23) Tooele	208
24) Uintah	277
25) Utah	403
26) Wasatch	244
27) Washington	310
28) Wayne	234
29) Weber	461

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	574
2) Box Elder	622
3) Cache	574
4) Carbon	574
5) Davis	627
6) Duchesne	574
7) Emery	574
8) Garfield	574
9) Grand	574
10) Iron	574
11) Juab	574
12) Kane	574
13) Millard	574
14) Morgan	574
15) Piute	574
16) Salt Lake	574
17) San Juan	586
18) Sanpete	574
19) Sevier	574
20) Summit	574
21) Tooele	574
22) Uintah	574
23) Utah	631
24) Wasatch	574
25) Washington	679
26) Wayne	574
27) Weber	627

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1) Beaver	243
2) Box Elder	262
3) Cache	271
4) Carbon	131
5) Daggett	161
6) Davis	274
7) Duchesne	168
8) Emery	140
9) Garfield	105
10) Grand	135
11) Iron	264
12) Juab	154
13) Kane	110
14) Millard	197
15) Morgan	199
16) Piute	193
17) Rich	106
18) Salt Lake	228
19) Sanpete	196
20) Sevier	201
21) Summit	204
22) Tooele	189
23) Uintah	209
24) Utah	253
25) Wasatch	211
26) Washington	231
27) Wayne	174
28) Weber	303

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1) Beaver	53
2) Box Elder	96
3) Cache	121
4) Carbon	50
5) Davis	52
6) Duchesne	54
7) Garfield	49
8) Grand	50
9) Iron	50
10) Juab	51
11) Kane	49
12) Millard	48
13) Morgan	65
14) Rich	49
15) Salt Lake	54
16) San Juan	55
17) Sanpete	55
18) Summit	49
19) Tooele	52
20) Uintah	55
21) Utah	51
22) Wasatch	49
23) Washington	49
24) Weber	78

23) Tooele	72
24) Uintah	83
25) Utah	66
26) Wasatch	52
27) Washington	65
28) Wayne	90
29) Weber	71

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1) Beaver	23
2) Box Elder	23
3) Cache	24
4) Carbon	16
5) Daggett	15
6) Davis	20
7) Duchesne	23
8) Emery	22
9) Garfield	24
10) Grand	23
11) Iron	23
12) Juab	20
13) Kane	24
14) Millard	25
15) Morgan	22
16) Piute	27
17) Rich	21
18) Salt Lake	22
19) San Juan	26
20) Sanpete	19
21) Sevier	19
22) Summit	21
23) Tooele	21
24) Uintah	29
25) Utah	24
26) Wasatch	18
27) Washington	22
28) Wayne	29
29) Weber	21

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1) Beaver	16
2) Box Elder	60
3) Cache	85
4) Carbon	15
5) Davis	16
6) Duchesne	20
7) Garfield	15
8) Grand	15
9) Iron	15
10) Juab	16
11) Kane	15
12) Millard	14
13) Morgan	29
14) Rich	15
15) Salt Lake	16
16) San Juan	18
17) Sanpete	20
18) Summit	15
19) Tooele	15
20) Uintah	20
21) Utah	16
22) Wasatch	15
23) Washington	14
24) Weber	45

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values listed below:

TABLE 11
GR III

1) Beaver	17
2) Box Elder	18
3) Cache	16
4) Carbon	13
5) Daggett	12
6) Davis	13
7) Duchesne	14
8) Emery	15
9) Garfield	17
10) Grand	16
11) Iron	16
12) Juab	14
13) Kane	16
14) Millard	17
15) Morgan	14
16) Piute	19
17) Rich	14
18) Salt Lake	15
19) San Juan	17
20) Sanpete	14
21) Sevier	14
22) Summit	15
23) Tooele	14
24) Uintah	20
25) Utah	14
26) Wasatch	13
27) Washington	14
28) Wayne	19
29) Weber	15

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1) Beaver	74
2) Box Elder	75
3) Cache	72
4) Carbon	52
5) Daggett	53
6) Davis	61
7) Duchesne	69
8) Emery	72
9) Garfield	79
10) Grand	80
11) Iron	76
12) Juab	65
13) Kane	74
14) Millard	78
15) Morgan	68
16) Piute	91
17) Rich	66
18) Salt Lake	69
19) San Juan	79
20) Sanpete	63
21) Sevier	64
22) Summit	73

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1) Beaver	6
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2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	6
9)	Garfield	5
10)	Grand	6
11)	Iron	6
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land	
1) All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.
2. The values obtained in A.1. for each county are summed

to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

- (i) the name of the taxpayer awarded the judgment;
- (ii) the appeal number of the judgment; and
- (iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

- (i) a copy of all judgment levy newspaper advertisements required;
- (ii) the dates all required judgment levy advertisements were published in the newspaper;
- (iii) a copy of the final resolution imposing the judgment levy;
- (iv) a copy of the Notice of Property Valuation and Tax

Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. share-down of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;
2. time series models, weighted 40 percent; and
3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and
2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
4. mobile and manufactured homes;
5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the

vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.
2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State

Pursuant to Utah Code Ann. Section 59-2-405.**A. Definitions.**

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

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

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual

registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be

considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in

association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

- a) brought back into the state; or
- b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

- 1. beginning on the first day of the month in which the property was brought into Utah; and
- 2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

- 1. No additional assessment may be imposed by any county to which the property is subsequently moved; and
- 2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004.

(1)(a) "Factual error" means an error that is:

- (i) objectively verifiable without the exercise of discretion, opinion, or judgment;

- (ii) demonstrated by clear and convincing evidence; and
- (iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

- (i) a mistake in the description of the size, use, or ownership of a property;

- (ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

- (iii) an error in the classification of a property that is eligible for a property tax exemption under:

- (A) Section 59-2-103; or
- (B) Title 59, Chapter 2, Part 11;

- (iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

- (v) valuation of a property that is not in existence on the lien date; and

- (vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

- (i) an alternative approach to value;

- (ii) a change in a factor or variable used in an approach to value; or

- (iii) any other adjustment to a valuation methodology.

(2) If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the commission, the procedures contained in this rule must be followed.

(3) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

- (a) the name and address of the property owner;
- (b) the identification number, location, and description of

the property;

- (c) the value placed on the property by the assessor;
- (d) the taxpayer's estimate of the fair market value of the property;

- (e) evidence or documentation that supports the taxpayer's claim for relief; and

- (f) the taxpayer's signature.

(4) If the evidence or documentation required under Subsection (3)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(5) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.

(6) If the information required under Subsection (3) is supplied, the county board of equalization shall render a decision on the merits of the case.

(7) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(8) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

- (i) the name and address of the property owner;
- (ii) the identification number, location, and description of the property;

- (iii) the value placed on the property by the assessor;
- (iv) the basis for appeal stated in the taxpayer's appeal;

- (v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

- (vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(9)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (9)(a) shall include:

- (i) the name and address of the property owner;
- (ii) the identification number of the property;

- (iii) the date the notice was sent;
- (iv) a notice of appeal rights to the commission; and

- (v) a statement of the decision of the county board of equalization; or

- (vi) a copy of the decision of the county board of equalization.

(10) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (9).

(11) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(12) Decisions by the county board of equalization are final orders on the merits.

(13) Except as provided in Subsection (15), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

- (a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(14) Appeals accepted under Subsection (13)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(15) The provisions of Subsection (13) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(16) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the

Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the

county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

- (i) class;
- (ii) property type;
- (iii) geographic location; and
- (iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

KEY: taxation, personal property, property tax, appraisals August 28, 2014

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- Art. XIII, Sec 2
- 9-2-201
- 11-13-302
- 41-1a-202
- 41-1a-301
- 59-1-210
- 59-2-102
- 59-2-103
- 59-2-103.5
- 59-2-104
- 59-2-201

- 59-2-210
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- 59-2-301.3
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- 59-2-303.1
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- 59-2-401
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- 59-2-405.1
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- 59-2-702
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- 59-2-1308.5
- 59-2-1317
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- 59-2-1330
- 59-2-1347
- 59-2-1351
- 59-2-1365
- 59-2-1703