

**R25. Administrative Services, Finance.**

**R25-7. Travel-Related Reimbursements for State Employees.**

**R25-7-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

**R25-7-2. Authority and Exemptions.**

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

**R25-7-3. Definitions.**

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

**R25-7-4. Eligible Expenses.**

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

**R25-7-5. Approvals.**

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

**R25-7-6. Reimbursement for Meals.**

(1) State employees who travel on state business may be

eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is \$40.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$16.00
Total	\$40.00

(b) The daily travel meal allowance for out-of-state travel is \$46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$22.00
Total	\$46.00

(4) When traveling to a Tier I premium location (Atlanta, Anchorage, Baltimore, Boston, Chicago, Hawaii, New York City, San Francisco, Seattle, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$65 per day.

When traveling to a Tier II premium location (Austin, Dallas, Houston, Los Angeles, Orlando, and San Diego), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$56 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

**Tier I Location**

(i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to \$50.

(ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to \$45.

(iii) If dinner is provided deduct \$30, leaving a premium allowance for breakfast and lunch of actual up to \$35.

**Tier II Location**

(i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to \$43.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$39.

(iii) If dinner is provided deduct \$26, leaving a premium allowance for breakfast and lunch of actual up to \$30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and

Incidental Expenses (M and IE) rate for their location.

(a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3  
The Day Travel Begins

1st Quarter a.m.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59
*B, L, D	*L, D	*D	*no meals
In-State \$40.00	\$30.00	\$16.00	\$0
Out-of-State \$46.00	\$36.00	\$22.00	\$0

\*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4  
The Day Travel Ends

1st Quarter a.m.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59
*no meals	*B	*B, L	*B, L, D
In-State \$0	\$10.00	\$24.00	\$40.00
Out-of-State \$0	\$10.00	\$24.00	\$46.00

\*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at 6 p.m. or later.

(d) The allowance is not considered an absolute right of

the employee and is authorized at the discretion of the Department Director or designee.

**R25-7-7. Meals for Statutory Non-Salaried State Boards.**

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

**R25-7-8. Reimbursement for Lodging.**

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax except as noted in the table below:

TABLE 5  
Cities with Differing Rates

Blanding	\$75.00 plus tax
Bluff	\$80.00 plus tax
Brigham City	\$75.00 plus tax
Bryce Canyon City	\$75.00 plus tax
Cedar City	\$75.00 plus tax
Ephraim	\$75.00 plus tax
Farlington	\$85.00 plus tax
Fillmore	\$75.00 plus tax
Garden City	\$80.00 plus tax
Green River	\$85.00 plus tax
Kanab	\$80.00 plus tax
Layton	\$80.00 plus tax
Logan	\$80.00 plus tax
Moab	\$100.00 plus tax
Monticello	\$80.00 plus tax
Ogden	\$80.00 plus tax
Park City/Heber City/Midway	\$90.00 plus tax
Price	\$75.00 plus tax
Provo/Orem/Lehi/American Fork	
Springville	\$85.00 plus tax
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$100.00 plus tax
St. George/Washington/Springdale	
Hurricane	\$80.00 plus tax
Torrey	\$80.00 plus tax
Tremonton	\$90.00 plus tax
Vernal/Roosevelt/Ballard/Naples	\$95.00 plus tax
All Other Utah Cities	\$70.00 plus tax

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50

miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(iv) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$25 per night with no receipts required or

(ii) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman.

(a) Tips for doormen and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant or with a state purchase card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night.

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

#### **R25-7-9. Reimbursement for Incidentals.**

#### **R25-7-10. Reimbursement for Transportation.**

State employees who travel on state business may be

eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the economy lot parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of \$20 or more.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 54 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 54 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at 54 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

**KEY: air travel, per diem allowances, state employees, transportation**

**February 23, 2016**

**63A-3-107**

**Notice of Continuation April 15, 2013**

**63A-3-106**

**R33. Administrative Services, Purchasing and General Services.****R33-6. Bidding.****R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.**

(1) Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) The conducting procurement unit is responsible for all content contained in the competitive sealed bidding, multiple stage bidding, and reverse auction solicitation documents, including:

- (a) reviewing all schedules, dates, and timeframes;
- (b) approving content of attachments;
- (c) providing the issuing procurement unit with redacted documents, as applicable;
- (d) assuring that information contained in the solicitation documents is public information; and
- (e) understanding the description of the procurement item(s) being sought, all criteria, requirements, factors, and formulas to be used for determining the lowest responsible and responsive bidder.

(3)(a) The award of a contract shall be to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids.

(b) Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods.

(c) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

**R33-6-102. Bidder Submissions.**

(1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:

- (a) the bidder's bid price;
- (b) the bidder's acknowledged receipt of addenda issued by the procurement unit;
- (c) the bidder to identify other applicable submissions; and
- (d) the bidder's signature

(2) Bidders may be required to submit descriptive literature and/or product samples to assist the chief procurement officer or head of a procurement unit with independent procurement authority in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.

(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.

(3) The provisions of Rule R33-7-105 shall apply to protected records.

(4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified

bidders.

(5) All bids must be based upon a definite calculated price

(a) "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by a procurement unit, and does not require a minimum purchase amount, or provide a maximum purchase limit;

(b) "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and

(c) Bids may not be based on using another bidder's price, including a percentage discount, formula, other amount related to another bidder's price, or conditions related to another bid or acceptance of an entire bid or a portion of a bid.

**R33-6-103. Pre-Bid Conferences and Site Visits.**

(1) Mandatory pre-bid conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits must require mandatory attendance by all bidders.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits allowing optional attendance by bidders are not permitted.

(c) A pre-bid conference may be attended via the following:

- (i) attendance in person;
- (ii) teleconference participation;
- (iii) webinar participation;
- (iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all bidders that do not have an authorize representative in attendance for the entire pre-bid conference or site visit to review any audio or video recording made.

(2)(a) If a pre-bid conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-bid conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-bid conference or

site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

- (i) the attendance log;
- (ii) minutes of the pre-bid conference or site visit;
- (iii) copies of any documents distributed to attendees at the pre-bid conference or site visit; and
- (iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

**R33-6-104. Addenda to Invitation for Bids.**

Prior to the submission of bids, a procurement unit may issue addenda which may modify any aspect of the Invitation for Bids.

(a) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

(b) After the due date and time for submitting bids, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Invitation for Bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the Invitation for Bids that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority, likely would have impacted the number of bidders responding to the Invitation for Bids.

**R33-6-105. Bids and Modifications to a Bid Received After the Due Date and Time.**

(1) Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined in R33-6-105(4).

(2) When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the system will stop the process and the bid or modification to the bid will not be accepted.

(3) When submitting a bid or modification to a bid by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.

(a) All bids or modifications to bids received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid shall be accepted as being on time.

**R33-6-106. Errors in Bids.**

The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancellation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or a contract under this Rule shall be supported in a written document, signed by the in the chief procurement officer or head of a procurement unit with independent procurement authority.

(1) Errors attributed to a bidder's error in judgment may not be corrected.

(2) Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error

in judgment may be corrected if it is in the best interest of the procurement unit and correcting the mistake maintains the fair treatment of other bidders.

(a) Examples include:

- (i) missing signatures,
- (ii) missing acknowledging receipt of an addendum;
- (iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;

(iv) typographical errors;

(v) mathematical errors not affecting the total bid price; or

(vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.

(3) The chief procurement officer or head of a procurement unit with independent procurement authority shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

(4) Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-605.

**R33-6-107. Errors Discovered After the Award of Contract.**

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the chief procurement officer or the head of a procurement unit with independent procurement authority.

**R33-6-108. Re-solicitation of a Bid.**

(1) Re-solicitation of a bid may occur only if the chief procurement officer or head of a procurement unit with independent procurement authority determines that:

- (a) A material change in the scope of work or specifications has occurred;
- (b) procedures outlined in the Utah Procurement Code were not followed;
- (c) additional public notice is desired;
- (d) there was a lack of adequate competition; or
- (e) other reasons exist that are in the best interests of the procurement unit.

(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

**R33-6-109. Only One Bid Received.**

(1) If only one responsive and responsible bid is received in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the procurement officer determines that the price submitted is fair and reasonable as set forth in R33-12-603 and R33-12-604, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:

- (a) a new invitation for bids solicited;
- (b) the procurement canceled; or
- (c) the procurement may be conducted as a sole source under Section 63G-6a-802.

**R33-6-110. Multiple or Alternate Bids.**

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for

bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the chief procurement officer or head of a procurement unit with independent procurement authority will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

**R33-6-111. Methods to Resolve Tie Bids.**

(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the chief procurement officer or head of a procurement unit with independent procurement authority by tossing a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being heads.

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

**R33-6-112. Publication of Award.**

(1) The issuing procurement unit shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

(a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

(b) the names and the prices of each bidder to which the contract is not awarded.

**R33-6-113. Multiple Stage Bidding Process.**

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609, Utah Procurement Code.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority may hold a pre-bid conference as described in Rule R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

**KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction**  
**February 23, 2016**  
**Notice of Continuation July 8, 2014**

63G-6a



**R33. Administrative Services, Division of Purchasing and General Services.**

**R33-12. Terms and Conditions, Contracts, Change Orders and Costs.**

**R33-12-101. Required Contract Clauses.**

Public entities shall comply with Section 63G-6a-1202 considering clauses for contracts. Executive branch procurement units shall also comply with the requirements of Section 63G-6a-402(6). All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

**R33-12-201. Establishment of Terms and Conditions.**

(1) Executive branch procurement units without independent procurement authority shall be required to use the Standard Terms and Conditions adopted by the division for each particular procurement, unless exceptions or additions are granted by the Chief Procurement Officer after consultation with the Attorney General's Office. Public entities, other than executive branch procurement units, may enact similar requirements. Terms and conditions may be established for:

- (a) a category of procurement items;
- (b) a specific procurement item;
- (c) general use in all procurements;
- (d) the special needs of a conducting procurement unit; or
- (e) the requirements of federal funding.

(2) In addition to the required standard terms and conditions, executive branch procurement units without independent procurement authority may submit their own additional special terms and conditions subject to the following:

- (a) the chief procurement officer may reject terms and conditions submitted by a conducting procurement unit if:
  - (i) the terms and conditions are unduly restrictive;
  - (ii) will unreasonably increase the cost of the procurement item; or
  - (iii) places the state at increased risk.
- (b) the chief procurement officer may require the conducting procurement unit's Assistant Attorney General to approve any additional special terms and conditions.

**R33-12-301. Awarding Multiple Award Contracts.**

(1) A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed with a vendor on multiple award contract pursuant to the procedures established in R33-12-301.2, ordering from a multiple award contract.

(2) As authorized under Section 63G-6a-1204.5, the division or a procurement unit with independent procurement authority may enter into multiple award contracts.

(3) A multiple award contract may be awarded under a single solicitation when two or more bidders or offerors for similar procurement items are needed for:

- (a) Coverage on a statewide, regional, combined statewide and regional basis, agency specific requirement, or other criteria specified in the solicitation such as:
  - (i) delivery;
  - (ii) service;
  - (iii) product availability; or
  - (iv) Compatibility with existing equipment or infrastructure.

(4) In addition to the requirements set forth in Section 63G-6a-603 and Section 63G-6a-703, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that:

- (a) Indicates that contracts may be awarded to more than one bidder or offeror;

(b) Specifies whether contracts will be awarded on a statewide, regional, combined statewide and regional basis, or agency specific requirement; and

(c) Describes specific methodology or a formula that will be used to determine the number of contract awards.

(5) Multiple award contracts in an invitation for bids shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 6 to the lowest responsive and responsible bidder(s) who meet the objective criteria described in the invitation for bids and may be awarded to provide adequate regional, statewide, or combined regional and statewide coverage, agency specific requirement, or delivery, or product availability using the following methods:

(a) lowest bids for all procurement items solicited provided the solicitation indicates that multiple contracts will be awarded to the lowest bidders for all procurement items being solicited as determined by the following methods:

(i) all bids within a specified percentage, not to exceed five percent, of the lowest responsive and responsible bid, unless otherwise approved in writing by the chief procurement officer or head of a procurement unit with independent procurement authority;

(ii) all responsive and responsible bidders will be awarded a contract, provided the contract specifically directs that orders must be placed first with low bidder unless the lowest bidder cannot provide the needed procurement item, then with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item, then with the third lowest bidder unless the third lowest bidder cannot provide the needed procurement item, and so on in order from the lowest responsive and responsible bidder to the highest responsive and responsible bidder; or

(iii) other methodology described in the solicitation to award contracts;

(b) lowest bid by Category provided:

(i) the solicitation indicates that a contract will be awarded based on the lowest bid per category;

(ii) only one bidder may be awarded a contract per category;

(c) lowest bid by line item provided:

(i) the solicitation indicates that a contract will be awarded based on the lowest bid per line item, task or service;

(ii) only one bidder may be awarded a contract per line item, task or service; or

(d) Other specific objective methodology described in the solicitation, such as R33-12-302 for primary and secondary contracts, approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(6) Multiple award contracts in a request for proposals shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 7 and may be awarded on a statewide, regional, combination statewide and regional basis, agency specific requirement, or other criteria set forth in the solicitation and in accordance with point thresholds and other methodology set forth in the RFP describing how multiple award contracts will be awarded with enough specificity as to avoid the appearance of any favoritism affecting the decision of whether to award a multiple contract and who should receive a multiple award contract.

**R33-12-301a. Multiple Award Contracts for Unidentified Procurement Items.**

(1) An unidentified procurement item is defined as a procurement item that at the time the solicitation is issued:

(a) Has not been specifically identified but will be identified at some time in the future, such as an approved vendor list or approved consultant list;

(b) Does not have a clearly defined project or procurement specific scope of work; and

(c) Does not have a clearly defined project or procurement specific budget.

(2) Unidentified procurement items may be procured under the approved vendor list thresholds established by the applicable rule making authority or administrative rule R33-4-102.

(3) An RFP, request for statements of qualifications, or multi stage solicitation issued for a multiple award contract for unidentified procurement item(s) must specify the methodology that the procurement unit will use to determine which vendor under the multiple award contract will be selected.

(a) The methodology must include a procedure to document that the procurement unit is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.

(b) The methodology must also ensure the fair and equitable treatment of each multiple award contract vendor, including using methods to select a vendor such as:

(i) a rotation system, organized alphabetically, numerically, or randomly;

(ii) assigning a potential vendor or contractor to a specified geographical area;

(iii) classifying each potential vendor or contractor based on the potential vendor's or contractor's field or area of expertise; or

(iv) obtaining quotes or bids from two or more vendors or contractors.

#### **R33-12-301b. Ordering From A Multiple Award Contract.**

(1)(a) When buying a procurement item from a multiple award contract solicited through an invitation for bids, a procurement unit shall:

(i) obtain a minimum of two quotes for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(i) and place the order for the procurement item with the vendor or contractor with the lowest quoted price;

(ii) place the order for the procurement item with the lowest bidder on contract unless the lowest bidder cannot provide the needed procurement item, then the order may be placed with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item and on, in order, from lowest bidder to highest bidder as described in R33-12-301(5)(a)(ii);

(iii) place the order in accordance with instructions contained in the contract for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(iii);

(iv) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(b); or

(v) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(c);

(b) The requirement to obtain two or more quotes in section (1)(a)(i) is waived when there is only one bidder award for the particular procurement item or only one bidder is awarded per geographical area.

(2) When buying a procurement item from a multiple award contract solicited through an RFP, a procurement unit may place orders with any vendor or contractor under contract based on which procurement item best meets the needs of the procurement unit. Contracts awarded through the RFP process are awarded based on best value as determined by cost and non-price criteria specified in the RFP. As a result, all vendors, contractors and procurement items under contract issued through an RFP have been determined to provide best value to procurement units buying from these contracts.

(3) A procurement unit may not use a multiple award contract to steer purchases to a favored vendor or use any other means or methods that do not result in fair consideration being

given to all vendors that have been awarded a contract under a multiple award.

#### **R33-12-302. Primary and Secondary Contracts.**

(1) Designations of multiple award contracts as primary and secondary may be made provided a statement to that effect is contained in the solicitation documents.

(2) When the chief procurement officer or head of a procurement unit with independent procurement authority determines that the need for procurement items will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.

(3) Purchases under primary and secondary contracts shall be made, initially to the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then to secondary contractors in progressive order from lowest price or availability to the next lowest price or availability, and so on.

#### **R33-12-303. Intent to Use.**

If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

#### **R33-12-401. Contracts and Change Orders -- Contract Types.**

A procurement unit may use contract types to the extent authorized under Section 63G-6a-1205.

#### **R33-12-402. Prepayments.**

Prepayments are subject to the restrictions contained in Section 63G-6a-1208.

#### **R33-12-403. Leases of Personal Property.**

Leases of personal property are subject to the following:

(1) Leases shall be conducted in accordance with Division of Finance rules and Section 63G-6a-1209.

(2) A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:

(a) it is in the best interest of the procurement unit;

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

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

(3) Lease contracts shall be conducted with as much competition as practicable.

(4) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the procurement unit shall:

(a) investigate alternative means of procuring comparable procurement items; and

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

#### **R33-12-404. Multi-Year Contracts.**

(1) Procurement units may issue multi-year contracts in accordance with Section 63G-6a-1204.

(2) The standard contract term for executive branch procurement units is five years, unless the chief procurement officer or head of a procurement unit with independent procurement authority determines that a shorter or longer term contract is in the best interest of the procurement unit after considering:

(a) the cost associated with conducting more than one procurement within a five-year period if a shorter term is required;

- (b) the impact on competition if a longer term is required;  
 (c) standard practices for the industry; and  
 (d) the needs of the procurement unit.

**R33-12-404a. Contracts With Renewal Options.**

(1) In order to ensure fair and open competition in the procurement process and to avoid costs associated with administering contracts with renewal options, executive branch procurement units shall document in writing why renewal options are in the best interest of the procurement unit taking into consideration:

- (a) federal funding requirements;  
 (b) the cost associated with administering renewal options;  
 (c) how the cost of the procurement item will be established during any renewal periods; and  
 (d) how the principle of upholding fair and open competition will be maintained.

**R33-12-405. Installment Payments.**

(1) Procurement units may make installment payments in accordance with Section 63G-6a-1208.

**R33-12-501. Change Orders.**

(1) In addition to the requirements contained in Section 63G-6a-1207, for executive branch procurement units without independent procurement authority, the certifications required under 63G-6a-1207(1) and 63G-6a-1207(2) must be submitted in writing by the procurement unit to the chief procurement officer prior to the commencement of any work to be performed under a contract change order unless:

- (a) The procurement unit has authority, as may be granted under Section 63G-6a-304(1) and Rule R33-3-101, to authorize contract change orders up to the amount delegated; or  
 (b) The change order is requisite to:  
 (i) avert an emergency; or  
 (ii) is required as an emergency.  
 (c) For purposes of this subsection "emergency" is described in Rule R33-8-401(3) and is subject to Section 63G-6a-803.

(2) Any contract change order authorized by a procurement unit under Rule R33-12-501(1)(c) shall, as soon as practicable, be submitted to the chief procurement officer and included in the division's contract file.

**R33-12-502. Contract Modifications for New Technology and Technological Upgrades.**

A contract for a procurement item may be modified to include new technology or technological upgrades associated with the procurement item, provided:

- (1) The solicitation contains a statement indicating that:  
 (a) the awarded contract may be modified to incorporate new technology or technological upgrades associated with the procurement item being solicited, including new or upgraded:  
 (i) systems;  
 (ii) apparatuses;  
 (iii) modules;  
 (iv) components; and  
 (v) other supplementary items;  
 (b) a maintenance or service agreement associated with the procurement item under contract may be modified to include any new technology or technological upgrades; and  
 (c) Any contract modification incorporating new technology or technological upgrades is specific to the procurement item being solicited and substantially within the scope of the original procurement or contract.

(2) Any contract modification incorporating new

technology or technological upgrades is agreed upon by all parties and is executed using the process set forth in the contract for other contract modifications.

(3) Prior to executing a contract modification incorporating new technology or technological upgrades, executive branch procurement units shall obtain the approval of the Executive Director of the Department of Technology Services.

(4) A contract modification for new technology or technology upgrades may not extend the term of the contract except as provided in the Utah Procurement Code.

**R33-12-601. Requirements for Cost or Pricing Data.**

(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.

(2) Cost or pricing data exceptions:

(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;

(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the chief procurement officer or head of a procurement unit with independent procurement authority may request additional cost or pricing data; or

(c) the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

**R33-12-602. Defective Cost or Pricing Data.**

(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the procurement unit may enter into discussions to negotiate a settlement.

(2) If a settlement cannot be negotiated, either party may seek relief through the courts.

**R33-12-603. Price Analysis.**

(1) Price analysis may be used to determine if a price is reasonable and competitive, such as when:

- (a) there are a limited number of bidders or offerors;  
 (b) awarding a sole source contract; or  
 (c) identifying price outliers in bids and offers.

(2) Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms and conditions, and so on.

(3) Examples of a price analysis include:

- (a) prices submitted by other prospective bidders or offerors;  
 (b) price quotations;  
 (c) previous contract prices;  
 (d) comparisons to the existing contracts of other public entities; and,  
 (e) prices published in catalogs or price lists.

**R33-12-604. Cost Analysis.**

(1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:

- (a) specific elements of costs;  
 (b) total cost of ownership and life-cycle cost;  
 (c) supplemental cost schedules;  
 (d) market basket cost of similar items;  
 (e) the necessity for certain costs;  
 (f) the reasonableness of allowances for contingencies;  
 (g) the basis used for allocation of indirect costs; and,  
 (h) the reasonableness of the total cost or price.

**R33-12-605. Audit.**

A procurement unit may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

**R33-12-606. Retention of Books and Records.**

Contractors shall maintain all records related to the contract. These records shall be maintained by the contractor for at least six years after the final payment, unless a longer period is required by law.

All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

**R33-12-607. Applicable Credits.**

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

**R33-12-608. Use of Federal Cost Principles.**

(1) In dealing with contractors operating according to federal cost principles, the chief procurement officer or head of a procurement unit with independent procurement authority, may use the federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance in

(2) In contracts not awarded under a program which is funded by federal assistance funds, the chief procurement officer or head of a procurement unit with independent procurement authority may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The chief procurement officer or head of a procurement unit with independent procurement authority and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award.

(3) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6a-1206, the cost principles specified in the grant shall control.

**R33-12-609. Authority to Deviate from Cost Principles.**

If a procurement unit desires to deviate from the cost principles set forth in these rules, a written determination shall be made by the chief procurement officer or head of a procurement unit with independent authority specifying the reasons for the deviation and the written determination shall be made part of the contract file.

**R33-12-701. Inspections.**

Circumstances under which the procurement unit may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed:

(1) whether the definition of "responsible", as defined in Section 63G-6a-103(40) and in the solicitation documents, has been met or are capable of being met; and

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

**R33-12-702. Access to Contractor's Manufacturing/Production Facilities.**

(1) The procurement unit may enter a contractor's or subcontractor's manufacturing/production facility or place of business to:

(a) inspect procurement items for acceptance by the procurement unit pursuant to the terms of a contract;

(b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Rule R33-12-605; and

(c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

**R33-12-703. Inspection of Supplies and Services.**

(1) Contracts may provide that the procurement unit or chief procurement officer or head of a procurement unit with independent procurement authority may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

**R33-12-704. Conduct of Inspections.**

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

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

**KEY: terms and conditions, contracts, change orders, costs  
February 23, 2016  
Notice of Continuation July 8, 2014**

**63G-6a**

**R51. Agriculture and Food, Administration.****R51-3. Government Records Access and Management Act.****R51-3-1. Purpose and Authority.**

Under authority of the Government Records Access and Management Act, Section 63G-2-204, and Section 63A-12-104. This rule provides procedures for access and denial of access to government records.

**R51-3-2. Duties of Divisions within the Department.**

Each Division Director shall comply with Section 63-A-12-103 and shall appoint a records officer to perform, or to assist in performing the following functions:

- A. The duties set forth in Section 63A-12-103; and
- B. Review and respond to requests for access to division records.

**R51-3-3. Requests for Access.**

A. All requests for access to records shall be in writing. Requests shall be directed to the attention of the records officer of the particular division which the requester believes generated or possesses the records.

B. The division is not required to respond to requests submitted to the wrong person or location within the time limits set by the Government Records Access and Management Act.

C. A fee will be charged for copies of records provided. Amounts charged for photocopying will be as authorized in Section 4-1-6 and Subsection 63G-2-203. Fees must be paid at the time of the request or before the records are provided to the requester.

**R51-3-4. Requests to Amend a Record.**

An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63G-2-603. The request shall be made in writing to the records officer of the particular division.

Adjudicative proceedings under the GRAMA Act shall be informal and will be carried out in accordance with Section 63G-2-401 et seq., with the exception of appeals.

**R51-3-5. Appeals of Requests to Amend a Record.**

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

**R51-3-6. Forms.**

Request forms are available from the records officer of each division.

**KEY: government documents, freedom of information, public records**

1992

63G-2-204

Notice of Continuation February 29, 2016

**R51. Agriculture and Food, Administration.****R51-4. ADA Complaint Procedure.****R51-4-1. Authority and Purpose.**

A. This rule is promulgated pursuant to Subsection 63G-3-201. The Department of Agriculture and Food adopts and defines complaint procedures to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, July 1, 1992 Ed.

B. No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this department, or be subjected to discrimination by this department.

**R51-4-2. Definitions.**

A. "The ADA Coordinator" means the Department of Agriculture and Food coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

- (1) Office of Planning and Budget;
- (2) Department of Human Resource Management;
- (3) Division of Risk Management;
- (4) Division of Facilities Construction Management, and
- (5) Office of the Attorney General.

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

D. "Major life activities" means such functions as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

E. "Individual with a disability" means a person who has a disability which limits one of the major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department of Agriculture and Food, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

**R51-4-3. Filing of Complaints.**

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the department's ADA Coordinator in writing or in another acceptable format suitable to the individual.

C. Each complaint shall:

- (1) include the individual's name and address;
- (2) include the nature and extent of the individual's disability;
- (3) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;
- (4) describe the action and accommodation desired, and
- (5) be signed by the individual or by a legal representative.

D. Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

**R51-4-4. Investigation of Complaint.**

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in R51-4-3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

- (1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;
- (2) facility modifications; or
- (3) reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.

**R51-4-5. Issuance of Decision.**

A. Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or in another acceptable or suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

**R51-4-6. Appeals.**

A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the department's executive director or designee.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve:

- (1) an expenditure of funds which is not absorbable and would require appropriation authority;
- (2) facility modifications; or
- (3) reclassification or reallocation in grade, he shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another acceptable or suitable format to the individual.

G. If the executive director or his designee is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable or suitable format why the decision is being delayed and the additional time needed to reach a decision.

**R51-4-8. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under the Utah Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA

Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, July 1, 1992 edition; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: developmentally disabled, discrimination, grievances  
1992 63G-3-201  
Notice of Continuation February 29, 2016**

**R52. Agriculture and Food, Horse Racing Commission (Utah).****R52-7. Horse Racing.****R52-7-1. Authority.**

Promulgated under authority of Section 4-38-4.

**R52-7-2. Definitions.**

The following definitions shall apply in these rules unless otherwise indicated.

1. "Act" means the Utah Horse Regulation Act.
2. "Added money" means all monies added to the fees paid by the horsemen into the purse for a race.
3. "Age" of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.
4. "Also Eligible" pertains to (a) a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to scratch time deadline; (b) the next preferred nonqualifier for the finals or consolation from a set of elimination trials which will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.
5. "Arrears" means money past due for entrance fees, jockey fees, or nomination or supplemental fees in nomination races, and therefore in default incidental to these Rules or the conditions of a race.
6. "Authorized Agent" means a person appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the Agent will act. Said instrument must be on file with the Commission and its authorized representatives.
7. "Bleeder" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.
8. "Breeder" of a horse is the owner or lessee of its dam at the time of breeding.
9. "Closing" means the time published by the organization after which nominations or entries will not be accepted for a race.
10. "Commission" means the Utah Horse Racing Commission.
11. "Commissioner" means a member of the Commission.
12. "Conditions of a race" are the qualifications which determine a horse's eligibility to enter.
13. "Day" is a period of 24 hours beginning at midnight.
14. "Race day" is a day during which horse races are conducted.
15. "Declaration" means the act of withdrawing an entered horse from a race before the closing of overnight entries.
16. "Drug (Medication)" means a substance foreign to the normal physiology of the horse.
17. "Enclosure" means all areas of the property of an organization licensee to which admission can be obtained only by payment of an admission fee or upon presentation of proper credentials and all parking areas designed to serve the facility which are owned or leased by the organization licensee.
18. "Entry" means a horse made eligible to run in a race.
19. "Family" means a husband, wife and any dependent children.
20. "Field" means all horses competing in a race.
21. "Financial Interest" means an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a business entity, or as a result of salary, gratuity, or other compensation or remuneration from any person.
22. "Foreign Substances" are all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include but not be limited

to all narcotics, stimulants, or depressants.

23. "Foul" means an action by any horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

24. "Horse" means an equine of any breed and includes a stallion, gelding, mare, colt, filly, spayed mare or ridgeling.

25. "Horse Racing" means any type of horse racing, including Arabian, Appaloosa, Paint, Pinto, Quarter Horse, and Thoroughbred horse racing.

26. Horse Racing Types:

A. "Appaloosa Horse Racing" means the form of horse racing in which each participating horse is an Appaloosa horse registered with the Appaloosa Horse Club or any successor organization and mounted by a jockey.

B. "Arabian Horse Racing" means the form of horse racing in which each participating horse is an Arabian horse registered with the Arabian Horse Club Registry of America and approved by the Arabian Horse Racing Association of America or any successor organization, mounted by a jockey, and engaged in races on the flat over a distance of not less than one-quarter mile or more than four miles.

C. "Paint Horse Racing" means the form of horse racing in which each participating horse is a Paint horse registered with the American Paint Horse Association or any successor organization and mounted by a jockey.

D. "Pinto Horse Racing" means the form of horse racing in which each participating horse is a Pinto horse registered with the Pinto Horse Association of America, Inc., or any successor organization and mounted by a jockey.

E. "Quarter Horse Racing" means the form of horse racing where each participating horse is a Quarter Horse registered with the American Quarter Horse Association or any successor organization, mounted by a jockey, and engaged in a race over a distance of less than one-half mile.

F. "Thoroughbred Horse Racing" means the form of horse racing in which each participating horse is a Thoroughbred horse registered with the Jockey Club or any successor organization, mounted by a Jockey, and engaged in races on the flat.

27. "Inquiry" means the stewards immediate investigation into the running of a race which may result in the disqualification of one or more horses.

28. "Jockey" means the rider licensed to race.

29. "Jockey Agent" means a licensed authorized representative of a jockey.

30. "Lessee" means a licensed owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the registration certificate and on file with the Commission.

31. "Lessor" means the owner of the horse that is leased.

32. "Maiden" means a horse that has never won a race recognized by the official race records of the particular horse's breed registry. A maiden which has been disqualified after finishing first is still a maiden.

33. "Minor" means any individual under 18 years of age.

34. "Nominator" means the person who nominated the horse as a possible contender in a race.

35. "Objection" means:

A. A written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered;

B. A verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owners licensed Authorized Agent before the race is declared official.

36. "Occupation License" means a requirement for any person acting in any capacity within the enclosure during the race meeting.

37. "Occupation Licensee" means a person who has



obtained an occupation license.

38. "Utah Bred Horse" means a horse that is sired by a stallion standing in Utah.

39. "Organization License" means a requirement of any person desiring to conduct a race meeting within the state of Utah.

40. "Organization Licensee" means any person receiving an organization license. Owner is any person who holds, in whole or in part, any rights title or interest in a horse, or any lessee of a horse who has been duly issued a currently valid owner's license as a person responsible for such horse.

41. "Person" means any individual, corporation, partnership, syndicate, another association or entity.

42. "Post Position" means the position in the starting gate assigned to the horse for the race.

43. "Post Time" means the advertised time for the arrival of the horses at the start of the race.

44. "Protest" means a written complaint, signed by the protester, against any horse which has started in a race and shall be made to the Stewards within 48 hours after the running of the race, except as noted in Subsection R52-7-10(8).

45. "Race Meeting" means the entire period of time not to exceed 20 calendar days separating any race days for which an organization license has been granted to a person by the Commission to hold horse racing.

46. "Allowance" means a race in which eligibility and/or the weight to be carried are based upon the horse's past performance over a specified time.

47. "Handicap" means a race in which the weights to be carried by the entered horses are assigned according to the Racing Secretary's evaluation of each horse's potential for the purpose of equalizing their respective chances of winning.

48. "Invitational" means a race in which the competing horses are selected by inviting their owners to enter specific horses.

49. "Match" means a race contest between two horses with prior consent by the Commission under conditions agreed to by the owners.

50. "Nomination" means a race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least 72 hours before the first post time of the day the race is originally scheduled to be run.

51. "Progeny" means a race restricted to the offspring of a specific stallion or stallions.

52. "Purse Race (Overnight)" means any race in which entries close less than 72 hours prior to its running.

53. "Schooling Race" means a preparatory race for entry qualification in official races which conform to requirements adopted by the Commission.

54. "Stakes" means a race which is eligible for stakes or "black-type" recognition by the particular breed registry.

55. "Trials" means a set of races in which eligible horses compete to determine the finalists for a purse in a nominated race.

56. "Restricted Area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to, the barn area, paddock, test barn, Stewards Tower, race course, or any other area designated restricted by the organization licensee and/or the Commission. Signs giving notice of restricted access shall be prominently displayed at all entry points.

57. "Rules" means the rules herein prescribed and any amendments or additions.

58. "Scratch" means the act of withdrawing an entered horse from a race after the closing of overnight entries.

59. "Scratch Time" means the deadline set by the organization licensee for the withdrawing of entered horses.

60. "Starter" means the horse whose stall door of the starting gate opens in front of such horse at the time the starter (the Official) dispatches the horses.

61. "Subscription" means the act of nominating a horse to a nomination race.

62. "Week" means a period of seven days beginning at 12:01 a.m., Monday during which races are conducted.

### **R52-7-3. Commission Powers and Jurisdiction.**

1. Description and Powers. The Utah Horse Racing Commission is an administrative body created by Section 4-38-3. The Commission consists of five members which are appointed by the governor, and whose powers and duties are prescribed by the legislature. The Commission appoints an executive director who is the administrative head of the agency, and the Commission determines the duties of the executive director. The Commission shall have supervision of all sanctioned race meetings held in the State of Utah, and all occupation and organization licensees in the State and all persons on the property of an organization licensee.

2. Jurisdiction. Without limitations by specific mention hereof, the stated purposes of the Rules and Regulations hereby promulgated are as follows:

A. To encourage agriculture and breeding of horses in this State; and

B. To maintain race meetings held in the State of the highest quality and free of any horse racing practices which are corrupt, incompetent, dishonest or unprincipled; and

C. To maintain the appearance as well as the fact of complete honesty and integrity of horse racing in this State; and

D. To generate public revenues.

E. Commission jurisdiction of a race meet commences one hour prior to post time and ends one hour following the last posted race.

3. Controlling Authority. The law, the rules, and the orders of the Commission supersede the conditions of a race meeting and govern Thoroughbred, Quarter Horse, Appaloosa, Arabian, Paint and Pinto racing, except in the event it can have no application to a specific type of racing. In the latter case, the Stewards may enforce rules or conditions of The Jockey Club for Thoroughbred racing, the American Quarter Horse Association for Quarter Horse racing; the Appaloosa Horse Club for Appaloosa racing; the Arabian Horse Racing Association of America for Arabian racing; the American Paint Horse Association for Paint racing; and the Pinto Horse Association of America, Inc., for Pinto racing; if such rules or conditions are not inconsistent with the Laws of the State of Utah and the Rules of the Commission.

4. Punishment By The Commission. Violation of the Act and rules promulgated by the Commission, whether or not a penalty is fixed therein, is punishable in the discretion of the Commission by denial, revocation or suspension of any license; by fine; by exclusion from all racing enclosures under the jurisdiction of the Commission; or by any combination of these penalties. Fines imposed by the Commission shall not exceed \$10,000 against individuals for each violation, any Rules or regulations promulgated by the Commission, or any Order of the Commission; or for any other action which, in the discretion of the Commission, is a detriment or impediment to horse racing, according to Subsection 4-38-9(2).

5. Extension For Compliance. If a licensee fails to perform an act or obtain required action from the Commission within the time prescribed therefore by these Rules, the Commission, at some subsequent time, may allow the performance of such act or may take the necessary action with the same effect as if the same were performed within the prescribed time.

6. Notice To Licensee. Whenever notice is required to be given by the Commission or the Stewards, such notice shall be

given in writing by personal delivery to the person to be notified or by mailing, Certified Mail, Return Receipt Requested, such notice to the last known address furnished to the Commission; or may be given as is provided for service of process in a civil proceeding in the State of Utah and pursuant to the Administrative Procedures Act.

7. Location For Information Or Filing With Commission.

When information is requested or a notice in any matter is required to be filed with the Commission, such notice shall be delivered to an authorized representative of the Commission at an office of the Commission on or before the filing deadline. Offices of the Commission are currently located at: State of Utah, Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT 84116.

8. Public Inspection Of Documents. All forms adopted by the Commission together with all Rules and other written statements of policy or interpretation; and all final orders, decisions, and opinions, formulated, adopted or used by the Commission in the discharge of its functions are available for public inspection at the above office.

9. Forms And Instruction. The following forms and instructions for their use have been adopted by the Commission:

- Apprentice Jockey Certificate
- Authorized Agent Agreement
- Fingerprint Card
- Identifier's Daily Report
- Lease Agreement
- Occupation Licensee Application(s)
- Occupation License Renewal Application(s)
- Open Claim Certificate
- Organization's Daily Report
- Organization Licensee Application
- Petition for Declaratory Ruling
- Petition for Promulgation, Amendment or Repeal of Rule
- Petition in and before the Utah Horse Commission
- Postmortem Examination Report
- Stable Name, Corporation, Partnership or Syndicate Registration Form
- Stewards' Daily Report
- Stewards' Hearing Notice
- Stewards' Hearing Reports
- Subpoena (Steward and Commission)
- Test Barn Diuretic Approval Form

10. Forms for substituting petitions for promulgating or repealing of rules, and for requests for declaratory ruling are available at the Utah State Department of Agriculture and Food.

**R52-7-4. Racing Organization.**

1. Allocation Of Racing Dates. The Commission shall allocate racing dates for the conduct of horse race meetings within this State for such time periods and at such racing locations as the Commission determines will best serve the interests of the people of the State of Utah in accordance with the Utah Horse Act. Upon a finding by the Commission that the allocation of racing dates for any year is completed, the racing dates so allocated shall be subject to reconsideration or amendment only for conditions unforeseen at the time of allocation.

2. Application For License And Days To Conduct A Horse Race Meeting. Every person who intends to conduct a horse race meeting shall file such application with the Commission no later than August 1 of the preceding calendar year. Any prospective applicant for license and days to conduct a horse race meeting failing to timely file the application for license may be disqualified and its application for license refused summarily by the Commission.

3. Commission May Demand Information. The Commission may require any racing organization or prospective racing organization to furnish the Commission with a detailed

proposal and disclosures as to its proposed racing program, purse, program, financial projections, racing officials, principals or shareholders, plants, premises, facility, finances, lease arrangements, agreements, contracts, and such other information as the Commission may require to determine the eligibility and qualification of the organization to conduct a race meeting; all in addition to that required in the application form set forth in Subsection R52-7-4(4) and as required by Section 4-38-4.

4. Application For Organization License. Any person desiring to conduct a horse race meeting where the public is charged an admission fee shall apply to the Commission for an organization license. The application shall be made on a form prescribed and furnished by the Commission. The application shall contain the following information:

A. The dates on which and location where the applicant intends to conduct the race meeting.

B. The name and mailing address of the person making the application.

1. If the applicant is a corporation, a certified copy of the Articles of Incorporation and Bylaws; the names and mailing addresses of all stockholders who own at least 3% of the total stock issued by the corporation, officers, and directors; and the number of shares of stock owned by each.

2. If the applicant is a partnership, a copy of the partnership agreement, and the names and mailing addresses of all general and limited partners with a statement of their respective interest in the partnership.

C. Description of photographic equipment, video equipment, and copies of any proposed lease or purchase contract or service agreement in connection therewith.

D. Copies of any agreements with concessionaires or lessees, together with schedules of rates charged for performance of any service or for sale of any article within the enclosure, whether directly or through the concessionaire.

E. Schedule of admission price(s) to be charged.

F. Applicants must submit balance sheets and profit and loss statements for each of the three fiscal years immediately preceding the application, or for the period of organization if less than three years. If the applicant has not completed a full fiscal year since its organization, or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year. All financial information shall be accompanied by an unqualified opinion of a Certified Public Accountant; or if the opinion is given with qualifications, the reasons for the qualifications must be stated.

G. A schedule of stall rent, entry fees, or any other charges to be made to the horsemen or public not mentioned above.

H. Any other information the Commission may require. For applicants requesting to conduct non pari-mutuel racing, the licensee fee shall not be less than \$25.00.

A separate application upon a form prescribed and furnished by the Commission shall be filed for each race meeting which such person proposes to conduct. The application, if made by a person, shall be signed and verified under oath by the person; and if made by more than one person or by a partnership, shall be signed and verified under oath by at least two of the persons or members of the partnership; and if made by an association, a corporation, or any other entity, shall be signed by the President, attested to by the Secretary under the seal of such association or corporation, if it has a seal, and verified under oath by one of the signing officers.

No person shall own any silent or undisclosed interest in any entity requesting an organization license. No organization license shall be issued to any applicant that fails to comply with provisions of this Rule. No incomplete license application shall be considered by the Commission.

I. In considering the granting or denying of all organization's application for a license to conduct horse racing

with the non pari-mutuel system of wagering, the following criteria, standards, and guides should be considered by the Commission:

1. Public Interest
  - a. Safety
  - b. Morals
  - c. Security
  - d. Municipal Comments
  - e. Revenues: State and Local
2. Track Location
  - a. Traffic Flow
  - b. Support Services (i.e., hotels, restaurants, etc.)
  - c. Labor Supply
  - d. Public Services (i.e., police, fire, etc.)
  - e. Proximity to Competition
3. Number of Tracks Running or Making Application
  - a. Size
  - b. Type of Racing
  - c. Days
4. Adequacy of Track Facilities
5. Experience in Racing of Applicant and Management
  - a. Length
  - b. Type
  - c. Success/Failure
6. Financial Qualifications of Applicant, Applicant's Partners, Officers, Associates, and Shareholders ( To Include Contract Services)
  - a. Financial History
    - (1) Records
    - (2) Net Worth
7. Qualifications of Applicant, Applicant's Partners, Officers, Associates, and Shareholders (To Include Contract Services)
  - (1) Arrest Record
  - (2) Conviction Record
  - (3) Litigation Record (Civil/Criminal)
  - (4) Law Enforcement Intelligence
  8. Official Attitude of Local Government Involved
  9. Anticipated Effect Upon Breeding and Horse Industry in Utah
  10. Effect on Saturation of Non pari-Mutuel Market
  11. Anticipated Effect upon State's Economy
    - a. General Economy
      - (1) Tourism
      - (2) Employment
      - (3) Support Industries
    - b. Government Revenue
      - (1) Tax (Direct/Indirect)
      - (2) Income (Direct/Indirect)
  12. Attitude of Local Community Involved
  13. The Written Attitude of Horse Industry Associations
  14. Experience and Credibility of Consultants, Advisors, and Professionals
    - a. Feasibility
    - b. Credibility and Integrity of Feasibility Study
  15. Financial and Economic Integrity of Financial Plan
    - (1) Equity
      - a. Source
      - b. Amount
      - c. Position
      - d. Type
    - (2) Debt
      - a. Source
      - b. Amount
      - c. Terms
      - d. Repayment
    - (3) Equity to Debt Ratio
      - a. Integrity of Financing Plan
        - (1) Identity of Participants

- (2) Role of Participants
- (3) History of Participants
- (4) Law Enforcement Intelligence

16. Apparent or Non-Apparent Hope of Financial Success

5. List Of Shareholders. Each organization shall, if a corporation or partnership, maintain a current list of shareholders and the number of shares held by each; and such list shall be available for inspection upon demand by the Commission or its representatives. The organization shall immediately inform the Commission of any change of corporate officers or directors, general or managing partners, or of any change in shareholders; provided, however, that if the organization is a publicly-held entity, it shall disclose the names and addresses of shareholders who own 3% of the outstanding shares of the organization. The organization shall immediately notify the Commission of all stock options, tender offers, and any anticipated stock offerings. The Commission may refuse to issue a license to, or suspend the license of, any organization which fails to disclose the real name of any shareholders.

6. Denial Of License. The Commission may deny a license to conduct a horse racing meeting when in its judgment it determines the proposed meeting is not in the public interest, or fails to serve the purposes of the Utah Horse Act, or fails to meet any requirements of Utah State law or the Commission's rules. The Commission shall refuse to issue a license to any applicant who fails to provide the Commission with evidence of its ability to meet its estimated financial obligations for the conduct of the meeting.

7. Duty Of Licensed Organization. Each organization shall observe and enforce the rules of the Commission. The license is granted on the condition that the organization, its officials, its employees and its concessionaires shall obey all decisions and orders of the Commission. The organization shall not allow any wagering within the enclosure of the racing facility which might be construed as being in violation of the Laws of the State of Utah.

8. Conditions Of A Race Meeting. The organization may impose conditions for its race meeting as it may deem necessary; provided, however, that such conditions may not conflict with any requirements of Utah State Law or the Rules, Regulations and Orders of the Commission. Such conditions shall be published in the Condition Book or otherwise made available to all licensees participating in its race meeting. A copy of the conditions and nomination race book shall be published no later than 45 days prior to the commencement of the race meeting. A proof of such conditions and nomination race book shall be filed with the Commission no later than 45 days prior to printing. The conditions and nomination race book is subject to the approval of the Commission. The organization may impose requirements, qualifications, requisites, and track rules for its race meeting as it may deem necessary; provided such requirements, qualifications, and track rules do not conflict with Utah State Law or the Rules, Regulations, and Orders of the Commission. Such information shall be published in the Condition Book, posted on the organization's bulletin boards, or otherwise made available to all licensees participating at its race meeting.

All requirements, qualifications, requisites or track rules imposed by the organization require prior review and approval by the Commission, which reserves the right of final decision in all matters pertaining to the conditions of a race meeting.

9. Right Of Commission To Information. The organization may be asked to furnish the Commission, on forms approved by the Commission, a daily itemized report of the receipts of attendance, parking, concessions, commissions, and any other requested information. The organization shall also provide a corrected official program, completed race results charts approved by the Commission, and any other information the Commission may require. Such daily reports shall be filed

with the Commission within 72 hours of the race day.

10. **Duty To Compile Official Program.** The organization shall compile an official program for each racing day which shall contain the names of the horses which are to run in each race together with their respective post positions, post time for first race, age, color, sex, breeding, jockey, trainer, owners or stable name, racing colors, weight carried, conditions of the race, the order in which each race shall be run, the distance to be run, the value of each race, a list of Racing Officials and track management personnel, and any other information the Commission may require. The Commission may direct the organization to publish in the program any other information and notices to the public as it deems necessary.

11. **Duty To Maintain Racing Records.** The organization shall maintain a complete record of all races of all authorized race meetings of the same type of racing being conducted by the organization, and such records shall be maintained and retained for a period of five years. This requirement may be met by race records of Triangle Publications, the American Quarter Horse Association, the Appaloosa Horse Club, the American Paint Horse Association, other breed registry associations' racing records department, or other racing publications approved by the Commission.

12. **Horsemen's Bookkeeper.** The organization shall employ a Horsemen's Bookkeeper who shall maintain records as the organization and Commission shall direct. The records shall include the name, address, social security or federal identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horseman's account. The Horsemen's Bookkeeper shall keep the riding accounts of the jockeys and shall disburse the received fees to the proper claimants. It shall be the duty of the Horsemen's Bookkeeper to receive and disburse the purses of each race and all stakes, entrance money, jockey fees, and other monies that properly come into his possession, and make disbursements within 48 hours of receipt of notification from the testing laboratory that drug tests have cleared unless an appeal or protest has been filed with the Stewards or the Commission. The Horsemen's Bookkeeper may accept monies due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due; except upon written request, the Horsemen's Bookkeeper shall, within 30 days after the meeting, disburse all monies to the persons entitled to receive the same. The Horsemen's Bookkeeper shall maintain a file of all required statements of partnerships, syndicates, corporations; assignments of interest; lease agreements; and registrations of authorized agents. All records and monies of the Horsemen's Bookkeeper shall be kept separate and apart from any other of the organization and are subject to inspection by the Commission at any time.

13. **Accounting Practices And Responsibility.** The organization and its managing officers shall ensure that all purse monies, disbursements, and appropriate nomination race monies are available to make timely distribution in accordance with the Act, the Rules and Regulations of the Commission, the organization rules, and race conditions. Copies of all nomination payment race contracts, agreements, and conditions shall be submitted to the Commission and related reporting requirements fulfilled as specified by the Commission. Subject to approval of the Commission, the organization shall maintain on a current basis a bookkeeping and accounting program under the guidance of a Certified Public Accountant. The Commission may require periodic audits to determine that the organization has funds available to meet those distributions for the purposes required by the Act, the Rules and Regulations of the Commission, the conditions and nomination race program of the race meeting, and the obligations incurred in the daily operation of the race meeting. Annually, the organization shall file a copy

of all tax returns, a balance sheet, and a profit and loss statement.

14. **Electronic Photo Finish Device.** All organizations shall install and maintain in good service an electronic photo finish device for photographing the finishes of all races and recording the time of each horse in hundredths of a second, when applicable, to assist the placing judges and the Stewards in determining the finishing positions and time of the horses. Prior to first use, the electronic photo finish device must be approved by the Commission; and a calibration report must be filed with the Commission by January 1 of each year. A photograph of each finish shall be promptly posted for public view in at least one conspicuous place in the public enclosure.

15. **Videotape Recording Of Races.** All organizations shall install and operate a system to provide a videotape recording of each race so that such recording clearly shows the position and action of the horses and jockeys at close enough range to be easily discernible. A video monitor shall be located in the Stewards' Tower to assist in reviewing the running of the races. Prior to first use, the videotape recording system and location and placement of its equipment must be approved by the Commission. Every race other than a race run solely on a straight course may be recorded by use of at least two cameras to provide panoramic and head-on views of the race. Races run solely on the straight course shall be recorded by the use of at least one camera to provide a head-on view. Except with prior approval of the Commission, all organizations shall maintain an auxiliary videotape recording camera and player in case of breakdown and/or malfunction of a primary videotape recording camera or player.

16. **Identification Of Photo Finish Photographs And Videotape Recordings.** All photo finish photographs and videotape recordings required by these Rules shall be identified by indicating thereon, the date, number of the race, and the name of the racetrack at which the race is held.

17. **Altering Official Photographs Or Recordings.** No person shall cut, mutilate, alter or change any photo finish photograph or videotape recording for the purpose of deceit or fraud of any type.

18. **Preservation Of Official Photographs And Recordings.** All organizations shall preserve all photographic negatives and videotape recordings of all races for at least 180 days after the close of their meeting. Upon request of the Commission, the organization shall furnish the Commission with a clear, positive print of any photograph of any race, or a kinescope print or copy of the videotape recording of any race.

19. **Viewing Room Required.** The organization shall maintain a viewing room for the purpose of screening the videotape recording of the races for viewing by Racing Officials, jockeys, trainers, owners, and other interested persons authorized by the Stewards.

20. **Office Space For The Commission.** The organization shall provide within the enclosure adequate office space for use by the Commission and its authorized representatives, and shall provide such necessary office furniture and utilities as may be required for the conduct of the Commission's business and the collection of the public revenues at such organization's meetings.

21. **Duty To Receive Complaints.** The organization shall maintain a place where written complaints or claims of violations (objections) of racetrack rules, regulations, and conditions; Commission Rules and Regulations; or Utah State Laws may be filed. A copy of any written complaint or claim filed with the organization shall be filed by the organization with the Commission or Commission representatives within 24 hours of receipt of the complaint or claim.

22. **Bulletin Boards Required.** The organization shall erect and maintain a glass enclosed bulletin board close to the Racing Secretary's Office in a place where access is granted to

all licensees, upon which all official notices of the Commission shall be posted. The organization shall also erect and maintain a glass enclosed bulletin board in the grandstand area where access is granted to all race day patrons, upon which all official notices of the Commission shall be posted.

23. **Communication Systems Required.** The organization shall install and maintain in good service a telephonic communication system between the Stewards' stand, racing office, jockey room, paddock, testing barn, starting gate, video camera locations, and other designated places. The organization shall also install and maintain in good service a public address communication system for the purpose of announcing the racing program, the running of the races, and any public service notices, as well as maintaining communications with the barn area for the purpose of paddock calls and the paging of horsemen.

24. **Ambulance Service.** Subject to the approval of the Commission, the organization shall provide the services of an approved medical ambulance and its properly qualified attendants at all times during the running of the race program at its meeting and, except with prior permission of the Commission, during the hours the organization permits the use of its race course for training purposes. The organization shall also provide the service of a horse ambulance during the same hours. A means of communication shall be provided by the organization between a staffed observation point (Stewards' Tower and Clocker's Stand) for the race course and the place where the required ambulances and their attendants are posted for prompt response in the event of accident to any person or horse. In the event an emergency necessitates the departure of a required ambulance, the race course shall be closed until an approved ambulance is again available within the enclosure.

25. **Safety Of Race Course And Premises.** The organization shall take cognizance of any complaint regarding the safety or uniformity of its race course or premises, and shall maintain in safe condition the race course and all rails and other equipment required for the conduct of its races.

26. **Starting Point Markers And Distance Poles.** Permanent markers must be located at each starting point to be utilized in the organization's racing program. The starting point markers and distance poles must be of a size and in a position where they can be seen clearly from the stewards' stand. The starting point markers and distance poles shall be marked with the appropriate distance and be the following colors:

TABLE

1/16 poles . . .	black and white horizontal stripes
1/8 poles . . .	green and white horizontal stripes
1/4 poles . . .	red and white horizontal stripes
220 yards . . .	green and white horizontal stripes
250 yards . . .	blue
300 yards . . .	yellow
330 yards . . .	black and white horizontal stripes
350 yards . . .	red
400 yards . . .	black
440 yards . . .	red and white horizontal stripes
550 yards . . .	black and white horizontal stripes
660 yards . . .	green and white horizontal stripes
770 yards . . .	black and white horizontal stripes
870 yards . . .	blue and white horizontal stripes

27. **Grade And Distance Survey.** A survey by a licensed surveyor of the race course, including all starting chutes, indicating the grade and measurement of distances to be run must be filed with the Commission prior to the first race meeting.

28. **Physical Requirements For Non pari-Mutuel Racing Facility.** In order for an organization to be granted a license to conduct non pari-mutuel racing, the facility shall meet the following physical requirements:

A. A regulation track shall be a straightaway course of 440 yards in length. The straightaway shall connect with an oval not

less than one-half mile in circumference; except that the width may vary according to the number of horses started in a field, but a minimum of twenty feet shall be allowed for the first two horses with an additional five feet for each added starter.

B. The inner and outer rails shall extend the entire length of the straightaway and around the connecting oval; it shall be at least thirty inches and not more than forty-two inches in height. A racetrack not approved by the Commission prior to January 1, 1993, shall otherwise have inner and outer rails of at least thirty-eight inches (38") and not more than forty-two inches in height. It shall be constructed of metal not less than two inches in diameter, wood not less than two inches in thickness and six inches in width, or other construction material approved by the Commission. Whatever construction material is used must provide for the safety of both horse and rider. It must be painted white and maintained at all times.

C. Stabling facilities should be adequate for the number of horses to be on hand for the meet. In no case will a track with less than 200 stalls be acceptable, without Utah Horse Commission approval.

D. Stands for Stewards and Timers shall be located exactly on the finish line and provide a commanding and uninterrupted view of the entire racing strip.

E. The paddock shall be spacious enough to provide adequate safety. The jockey's room shall be in or adjacent to the paddock enclosure and shall be equipped with separate but equal complete sanitation facilities including showers for both male and female riders. This area must be fenced to keep out unauthorized persons and provide maximum security and safety. The fence shall be at least four feet high of chain link, v-mesh or similar construction.

F. A Test Barn with a minimum of two stalls shall be provided for purpose of collecting urine specimens. The Test Barn and a walking ring large enough to accommodate several horses cooling out at the same time shall be completely enclosed by a fence at least eight feet high of chain link, v-mesh or similar construction. There shall be only one entrance into the Test Barn enclosure which shall remain locked or guarded at all times. Provisions shall be made in this area for an office to accommodate the needs of the Official Veterinarian and from which he can observe the stalls and the entrance into the Test Barn enclosure. The organization shall provide facilities for the immediate cooling and freezing of all urine specimens, and shall make provisions for the specimens to be shipped to the laboratory packed in dry ice.

G. A grandstand or bleachers shall be provided for the spectators and shall provide for the comfort and safety of the spectators. Facilities must include rest rooms and a public water supply.

29. **Organization As The Insurer Of The Race Meeting.** Approval of a race meeting by the Commission does not establish said Commission as the insurer or guarantor of the safety or physical condition of the organization's facilities or purse of any race. The organization does thereby agree to indemnify, save and hold harmless the Utah Horse Commission from any liability, if any, arising from unsafe conditions of track facilities or grandstand and default in payment of purses. The organization shall provide the Commission with a certificate of adequate liability insurance.

**R5-7-5. Occupation Licensing and Registration.**

1. **Occupation Licenses.** No person required to be licensed shall participate in a race meeting without their holding a valid license authorizing that participation. Licenses shall be obtained prior to the time such persons engage in their vocations upon such racetrack grounds at any time during the calendar year for which the organization license has been issued. Applicant will be required to provide one form of photo identification.

A. A person whose occupation requires acting in any capacity within any area of an enclosure shall pay the required fee and procure the appropriate license or licenses.

B. A person acting in any of the following capacities shall pay the required fee and procure the appropriate license or licenses: (A list of all required fees shall be available at the Utah Department of Agriculture and Food.)

1. Owner/Trainer Combination
2. Owner
3. Trainer
4. Assistant Trainer
5. Jockey
6. Veterinarian
7. Jockey Room Attendant
8. Paddock Attendant
9. Pony Rider
10. Concessionaire
11. Valet
12. Groom

C. A person whose license-identification badge is lost or destroyed shall procure a replacement license-identification badge and shall pay the required fee.

D. The date of payment of all required fees as recorded by the Commission shall be the effective date of issuance of a continuous occupation license or registration shall expire on December 31 of the year in which it is issued. A license renewal shall be on an annual basis beginning January 1.

E. All license applicants may be required to provide two complete sets of fingerprints on forms provided by or acceptable to the Commission and pay the required fee for processing the fingerprint cards through State and Federal Law Enforcement Agencies. If the fingerprints are of a quality not acceptable for processing, the licensee may be required to be re-fingerprinted.

F. All applicants for occupation licenses must be a minimum of 16 years of age. However, this shall not preclude dependent children under the age of 16 from working for their parents or guardian if said parents or guardian are licensed as a trainer or assistant trainer and permission has been obtained from the organization licensee. A trainer or his authorized representative signing a Test Barn Sample Tag must be licensed and a minimum of 18 years of age.

2. Employment Of Unlicensed Person. No organization, owner, trainer or other licensee acting as an employer within the enclosure at an authorized race meeting shall employ or harbor within the enclosure any person required to be licensed by the Commission until such organization, owner, trainer, or other employer determines that such person required to be licensed has been issued a valid license by the Commission. No organization shall permit any owner, trainer, or jockey to own, train, or ride on its premises during a recognized race meeting unless such owner, trainer, or jockey has received a license to do so from the Commission. The organization or prospective employer may demand for inspection the license of any person participating or attempting to participate at its meeting, and the organization may demand for inspection the documents relating to any horse on its grounds.

3. Notice Of Termination. Any organization, owner, trainer, or other licensee acting as an employer within the enclosure at an authorized race meeting shall be responsible for the immediate notification to the Commission and the organization conducting the race meeting of a termination of employment of a licensee. The employer shall make every effort to obtain the license badge from the employee and deliver the license badge to the Commission.

4. Application For License. An applicant for license shall apply in writing on the application forms furnished by the Commission.

5. License Identification Badge Requirements. The license identification badge may consist of the following information

concerning the licensee:

- A. Full Name
- B. Permanent Address
- C. License Capacity
- D. Date of Issue
- E. Passport-Type Color Photograph
- F. Date of Birth

All license identification badges may be color coded as to capacity of occupation and eligibility for access to restricted areas. All license holders, except jockeys riding in a race, must wear a current identification badge while present in restricted areas of the enclosure or as otherwise specified in Subsection R52-7-5(1).

6. Honoring Official Credentials. Credentials issued by the Commission may be honored for admission at all gates and entrances and to all places within the enclosure. Automobiles with vehicle decals issued by the Commission to its members and employees shall be permitted ingress and egress at any point. Credentials issued by the National Association of State Racing Commissioners to its members, past members, and staff shall be honored by the organization for admission into the public enclosure when presented therefore by such persons.

7. License Subject To Conditions And Agreements.

A. Every license is subject to the conditions and agreements contained in the application therefore and to the Statutes and Rules.

B. Every license issued to a licensee by the Commission remains the property of the Commission.

C. Possession of a license does not, as such, confer any right upon the holder thereof to employment at or participation in a race.

D. The Commission may restrict, limit, place conditions on, or endorse for additional occupational classes, any license, R52-7-5(9).

8. Changes In Application Information. Each licensee or applicant for license shall file with the Commission his permanent and his current mailing address and shall report in writing to the Commission any and all changes in application information.

9. Grounds For Denial, Refusal, Suspension Or Revocation Of License. The Commission, in addition to any other valid ground or reason, may deny, refuse to issue, suspend or revoke an occupation license for any person:

A. Who has been convicted of a felony of this State, any other state, or the United States of America; or

B. Who has been convicted of violating any law regarding gambling or controlled dangerous substance of this State, any other state, or of the United States of America; or

C. Who is unqualified to perform the duties required of the applicant; or

D. Who fails to disclose or states falsely any information required in the application; or

E. Who has been found guilty of a violation of any provision of the Utah Horse Act or of the Rules and Regulations of the Commission; or

F. Whose license for any racing occupation or activity requiring a license has been or is currently suspended, revoked, refused or denied for just cause in any other competent racing jurisdiction; or

G. Who has been or is currently excluded from any racing enclosure by a competent racing jurisdiction.

10. Examinations. The Commission may require the applicant for any license to demonstrate his knowledge, qualifications, and proficiency for the license applied for by such examination as the Commission may direct.

11. Refusal Without Prejudice. A refusal to issue a license (as distinguished from a denial of a license) to an applicant by the Commission at any race meeting is without prejudice; and the applicant so refused may reapply for a license at any

subsequent or other race meeting, or he may appeal such refusal to the Commission for hearing upon his qualifications and fitness for the license.

12. **Hearing After Denial Of License.** Any person who has had his license denied may petition the Commission to reopen the case and reconsider its decision upon a sufficient showing that there is now available evidence which could not, with the exercise of reasonable diligence, have been previously presented to the Commission. Any such petition must be filed with the Commission no later than 30 days after the effective date of the Commission's decision in the matter. Any person who has been denied a license by the Commission may not refile a similar application for license until one year from the effective date of the decision to deny the license.

13. **Financial Responsibility Of Applicants.** Applicants for license as horse owner or trainer must submit satisfactory evidence of their financial ability to care for and maintain the horses owned and/or trained by them when such evidence is requested by the Commission.

14. **Physical Examination.** The Commission or the Stewards may require that any jockey be examined at any time, and the Commission or the Stewards may refuse to allow any jockey to ride until he has successfully passed such examination.

15. **Qualifications For Jockey.** No person under 16 years of age shall be granted a jockey's license. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey unless he has satisfactorily worked a horse from the starting gate in company, before the Stewards or their representatives. Upon the recommendation of the Stewards, the Commission may issue a jockey's license granting permission to such person for the purpose of riding in not more than four races to establish the qualifications and ability of such person for the license. Subsequently, the Stewards may recommend the granting of a jockey's license.

16. **Jockey Agent.** A jockey agent is the authorized representative of a jockey if he is registered with the Stewards and licensed by the Commission as the Jockey's representative. No jockey agent shall represent more than two jockeys at the same time.

17. **Workers' Compensation Act Compliance.** No person may be licensed as a trainer, owner, or in any other capacity in which such person acts as the employer of any other licensee at any authorized race meeting, unless his liability for Workers' Compensation has been secured in accordance with the Workers' Compensation Act of the State of Utah and until evidence of such security for liability is provided the Commission. Should any such required security for liability for Workers' Compensation be canceled or terminated, any license held by such person shall be automatically suspended and shall be grounds for revocation of the license. If a license applicant certifies that he has no employees that would subject him to liability for Workers' Compensation, he may be licensed, but only for the period he has no employees.

18. **Program Trainer Prohibited.** No licensed trainer, for the purpose of avoiding his responsibilities or insurance requirements as set forth in these Rules, shall place any horse in the care or attendance of any other trainer.

19. **Qualifications For License As Horse Owner.** No person may be licensed as a horse owner who is not the owner of record of a properly registered race horse which he intends to race in Utah and which is in the care of a licensed trainer, or who does not have an interest in such race horse as a part owner or lessee, or who is not the responsible managing owner of a corporation, syndicate or partnership which is the legal owner of such horse.

20. **Horse Ownership By Lease.** Horses may be raced under lease provided a completed Utah Horse Commission, breed registry, approved pari-mutuel or other lease form acceptable to the Commission, is attached to the Registration

Certificate and on file with the Commission. The lessor(s) and lessee must be licensed as horse owners. No lessor shall execute a lease for the purpose of avoiding insurance requirements.

21. **Statements Of Corporation, Partnership, Syndicate Or Other Association Or Entity.** All organizational documents of a corporation, partnership, syndicate or other association or entity, and the relative proportion of ownership interest, the terms of sales with contingencies, arrangements, or leases, shall be filed with the Horsemen's Bookkeeper of the organization and with the Commission. The above-said documents shall declare to whom winnings are payable, in whose names the horses shall be run, and the name of the licensed person who assumes all responsibilities as the owner. The part owner of any horse shall not assign his share or any part of it without the written consent of the other partners, and such consent shall be filed with the Horsemen's Bookkeeper and the Commission. A person or persons conducting racing operations as a corporation, partnership, syndicate or other association or entity shall register the information required by Rules in this Article and pay the required fee(s) for the appropriate entity.

22. **Stable Name Registration.** A person or persons electing to conduct racing operations by use of a stable name shall register the stable name and shall pay the required fee.

A. The applicant must disclose the identity or identities of all persons comprising the stable name.

B. Changes in identities must be reported immediately to and approval obtained from the Commission.

C. No person shall register more than one stable name at the same time nor use his real name for racing purposes so long as he has a registered stable name.

D. Any person who has registered under a stable name may cancel the stable name after he has given written notice to the Commission.

E. A stable name may be changed by registering a new stable name and by paying the required Fee.

F. No person shall register a stable name which has been registered by any other person with any organization conducting a recognized race meeting.

G. A stable name shall be clearly distinguishable from that of another registered stable name.

H. The stable name, and the name of the owner or managing owner, shall be published in the official program. If the stable name consists of more than one person, the official program will list the name of the managing owner along with the phrase "et al."

I. If a partnership, corporation, syndicate, or other association or entity is involved in the identity comprising a stable name, the rules covering a partnership, corporation, syndicate or other association or entity must be complied with and the usual fees paid therefore in addition to the fees for the registration of a stable name.

23. **Ownership Licensing Required.** The ownership licensing procedures required by the Commission must be completed prior to the horse starting in a race and shall include all registrations, statements and payment of fees.

24. **Knowledge Of Rules.** Every licensee, in order to maintain their qualifications for any license held by them, shall be familiar with and knowledgeable of the rules, including all amendments. Every licensee is presumed to know the rules.

25. **Certain Prohibited Licenses.** Commission-licensed jockeys, veterinarians, organizations' security personnel, vendors, and such other licensees designated by the stewards with approval of the Commission, shall not hold any other license. The Commission may refuse to issue a license to a person whose spouse holds a license and which, in the opinion of the Commission, would create a conflict of interest.

**R52-7-6. Racing Officials and Commission Racing**

**Personnel.**

1. Racing Officials. The racing officials of a race meeting, unless otherwise ordered by the Commission, are as follows: the stewards, the associate judges, the placing judges, the paddock judge, the patrol judges, the starter, the identifier/tattooer, and the racing secretary. No racing official may serve in that capacity during any race meeting at which is entered a horse owned by them or by a member of their family or in which they have any financial interest. Being the lessee or lessor of a horse shall be construed as having a financial interest.

2. Responsibility To The Commission. The racing officials shall be strictly responsible to the Commission for the performance of their respective duties, and they shall promptly report to the Commission or its stewards any violation of the rules of the Commission coming to their attention or of which they have knowledge. Any racing official who fails to exercise due diligence in the performance of his duties shall be relieved of his duties by the stewards and the matter referred to the Commission.

3. Racing Officials Subject To Approval. Every racing official is subject to prior approval by the Commission before being eligible to act as a racing official at the meeting. At the time of making application for an organization license, the organization shall nominate the racing officials other than the racing officials appointed by the Commission; and after issuance of license to the organization, there shall be no substitution of any racing official except with approval of the stewards or the Commission.

4. Racing Officials Appointed By The Commission. The Commission shall appoint the following racing officials for a race meeting: The board of three stewards and the identifier/tattooer. The Commission may appoint from the approved stewards list one steward to serve as state steward.

5. Racing Personnel Employed By The Commission. The Commission shall employ the services of the licensing person for a race meeting.

6. General Authority Of Stewards. The stewards have general authority and supervision over all licensees and other persons attendant on horses, and also over the enclosures of any recognized meeting. Stewards have the power to interpret the Rules and to decide all questions not specifically covered by them. The stewards shall have the power to determine all questions arising with reference to entries, eligibility and racing; and all entries, declarations and scratches shall be under the supervision of the stewards. The stewards shall be strictly responsible to the Commission for the conduct of the race meeting in every particular.

7. Vacancy Among Racing Officials. Where a vacancy occurs among the racing officials, the stewards shall fill the vacancy immediately. Such appointment is effective until the vacancy is filled in accordance with the rules.

8. Jurisdiction Of Stewards To Suspend Or Fine. The stewards' jurisdiction in any matter commences 72 hours before entries are taken for the first day of racing at the meeting and extends until 30 days after the close of such meeting. In the event a dispute or controversy arises during a race meeting which is not settled within the stewards' thirty-day jurisdiction, then the authority of the stewards may be extended by authority of the Commission for the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission. The stewards may suspend for not more than one year per violation the license of anyone whom they have the authority to supervise; or they may impose a fine not to exceed \$2,500 per violation; or they may exclude from all enclosures in this state; or they may suspend and fine and/or exclude. All such suspensions, fines, or exclusions shall be reported immediately to the Commission. The Stewards may suspend a horse from participating in races if the horse has been involved in violation(s) of the rules promulgated by the Commission or

the provisions of the Utah Horse Act under the following circumstances:

A. A horse is a confirmed bleeder as determined by the official veterinarian, and the official veterinarian recommends to the stewards that the horse be suspended from participation.

B. A horse is involved with:

i. Any violation of medication laws and rules;

ii. Any suspension or revocation of an occupation license by the stewards or the Commission or any racing jurisdiction recognized by the Commission; or

iii. Any violation of prohibited devices, laws, and rules.

9. Referral To The Commission. The stewards may refer with or without recommendation any matter within their jurisdiction to the Commission.

10. Payment Of Fines. All fines imposed by the stewards or Commission shall be due and payable to the Commission within 72 hours after imposition, except when the imposition of such fine is ordered stayed by the stewards, the Commission, or a court having jurisdiction. However, when a fine and suspension is imposed by the stewards or Commission, the fine shall be due and payable at the time the suspension expires. Nonpayment of the fine when due and payable may result in immediate suspension pending payment of the fine.

11. Stewards' Reports And Records. The stewards shall maintain a record which shall contain a detailed, written account of all questions, disputes, protests, complaints, and objections brought to the attention of the stewards. The stewards shall prepare a daily report concerning their race day activities which shall include fouls and disqualifications, disciplinary hearings, fines and suspensions, conduct of races, interruptions and delays, and condition of racing facility. The stewards shall submit the signed original of their report and record to the Executive Director of the Commission within 72 hours of the race day.

12. Power To Order Examination Of Horse. The stewards shall have the power to have tested, or cause to be examined by a qualified person, any horse entered in a race, which has run in a race, or which is stabled within the enclosure; and may order the examination of any ownership papers, certificates, documents of eligibility, contracts or leases pertaining to any horse.

13. Calling Off Race. When, in the opinion of the stewards, a race(s) cannot be conducted in accordance with the rules of the Commission, they shall cancel and call off such race(s). In the event of mechanical failure or interference during the running of a race which affects the horses in such race, the Stewards may declare the race a "no contest." A race shall be declared "no contest" if no horse covers the course.

14. Substitution Of Jockey Or Trainer.

A. In the event a jockey who is named to ride a mount in a race is unable to fulfill his engagement and is excused by the stewards, the trainer of the horse may select a substitute jockey; or, if no substitute jockey is available, the stewards may scratch the horse from the race. However, the responsibility to provide a jockey for an entered horse remains with the trainer; and the scratching of said horse by the stewards shall not be grounds for the refund of any nomination, sustaining, penalty payments, or entry fees.

B. In the absence of the trainer of the horse, the stewards may place the horse in the temporary care of another trainer of their selection; however, such horse may not be entered or compete in a race without the approval of the owner and the substitute trainer. The substitute trainer must sign the entry card.

15. Stewards' List. The stewards may maintain a stewards' list of those horses which, in their opinion, are ineligible to be entered in any race because of poor or inconsistent performance due to the inability to maintain a straight course, or any other reason considered a hazard to the safety of the participants.



Such horse shall be refused entry until it has demonstrated to the stewards or their representatives that it can race safely and can be removed from the stewards' list.

16. **Duties Of The Starter.** The starter shall have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start. The starter shall appoint his assistants; however, he shall not permit his assistants to handle or take charge of any horse in the starting gate without his expressed permission. In the event that organization starter assistants are unavailable to head a horse, the responsibility to provide qualified individuals to head and/or tail a horse in the starting gate shall rest with the trainer. The starter may establish qualification for and maintain a list of such qualified individuals approved by the stewards. No assistant starter or any individual handling a horse at the starting gate shall in any way impede, whether intentionally or otherwise, the start of the race; nor may an assistant starter or other individual, except the jockey handling the horse at the starting gate, apply a whip or other device in an attempt to load any horse in the starting gate. No one other than the jockey shall slap, boot, or otherwise attempt to dispatch a horse from the starting gate.

17. **Starter's List.** The starter may maintain a starter's list of all horses which, in his opinion, are ineligible to be entered in any race because of poor or inconsistent performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter or his representatives that it has been satisfactorily schooled in the gates and can be removed from the starter's list. Such schooling shall be under the direct supervision of the starter or his representatives.

18. **Duties Of The Paddock Judge.** The paddock judge shall supervise the assembling of the horses scheduled to race, the saddling of horses in the paddock, the saddling equipment and changes thereof, the mounting of the jockeys, and their departure for the post. The paddock judge shall provide a report on saddling equipment to the Stewards at their request.

19. **Duties Of Patrol Judges.** The patrol judges, when utilized, shall be subject to the orders of the stewards and shall report to the stewards all facts occurring under their observation during the running of a race.

20. **Duties Of Placing Judges And Timers.** The placing judges, timers, and/or stewards shall occupy the judges' stand at the time the horses pass the finish line; and their duties shall be to hand time, place the horses in the correct order of finish, and report the results. In case of a dead heat or a disagreement as to the correct order of finish, the decision of the stewards shall be final. In placing the horses at the finish, the position of the horses' noses only shall be considered the most forward point of progress.

21. **Duties Of The Clerk Of Scales.** The clerk of scales is responsible for the presence of all jockeys in the jockey's room at the appointed time and to verify that all jockeys have a current Utah jockey's license. The clerk of scales shall verify the correct weight of each jockey at the time of weighing out and when weighing in, and shall report any discrepancies to the stewards immediately. In addition, he or she shall be responsible for the security of the jockey's room and the conduct of the jockeys and their attendants. He or she shall promptly report to the stewards any infraction of the Rules with respect to weight, weighing, riding equipment, or conduct. He or she shall be responsible for accounting of all data required on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day.

22. **Duties Of The Racing Secretary.** The racing secretary shall write and publish conditions of all races and distribute them to horsemen as far in advance of the closing of entries as possible. He or she shall be responsible for the safekeeping of registration certificates and the return of same to the trainers on request or at the conclusion of the race meeting. He or she shall

record winning races on the form supplied by the breed registry, which shall remain attached to or part of the registration certificate. The racing secretary shall be responsible for the taking of entries, checking eligibility, closing of entries, selecting the races to be drawn, conducting the draw, posting the overnight sheet, compiling the official program, and discharging such other duties of their office as required by the rules or as directed by the Stewards.

23. **Duties Of Associate Judge.** An associate judge may perform any of the duties which are performed by any racing official at a meeting, provided such duties are assigned or delegated to them by the Commission or by the stewards presiding at that meeting.

24. **Duties Of The Official Veterinarian.** The official veterinarian must be a graduate veterinarian and licensed to practice in the State of Utah. He or she shall recommend to the stewards any horse that is deemed unsafe to be raced, or a horse that it would be inhumane to allow to race. He or she shall supervise the taking of all specimens for testing according to procedures approved by the Commission. He or she shall provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion, or contamination. All specimens collected shall be sent in locked and sealed cases to the laboratory. He or she shall have the authority and jurisdiction to supervise the practicing licensed veterinarians within the enclosure. The official veterinarian shall report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting, and the reasons therefore. The official veterinarian may place horses on a veterinarian's list, and may remove from the list those horses which, in their opinion, can satisfactorily compete in a race.

25. **Veterinarian's List.** The official veterinarian may maintain a list of all horses who, in their opinion, are incapable of safely performing in a race and are, therefore, ineligible to be entered or started in a race. Such horse may be removed from the Veterinarian's List when, in the opinion of the official veterinarian, the horse has satisfactorily recovered the capability of performing in a race. The reasons for placing a horse on the veterinarian's list shall include the shedding of blood from one or both nostrils following exercise or the performance in a race and the running of a temperature unnatural to the horse.

26. **Duties Of The Identifier.** The identifier shall identify all horses starting in a race. The identifier shall inspect documents of ownership, eligibility, registration, or breeding as may be necessary to ensure proper identification of each horse eligible to compete at a race meeting provide assistance to the stewards in that regard. The identifier shall immediately report to the paddock judge and the stewards any horse which is not properly identified or any irregularities reflected in the official identification records. The identifier shall report to the stewards and to the Commission on general racing practices observed, and perform such other duties as the Commission may require. The identifier shall report to the racing secretary before the close of the race day business.

#### **R52-7-7. Entries and Declarations.**

1. **Control Over Entries And Declarations.** All entries and declarations are under the supervision of the Stewards or their designee; and they, without notice, may refuse the entries any person or the transfer of entries.

2. **Racing Secretary To Establish Conditions.** The racing secretary may establish the conditions for any race, the allowances or handicaps to be established for specific races, the procedures for the acceptance of entries and declarations, and such other conditions as are necessary to provide and conduct the organization's race meeting. The racing secretary is responsible for the receipt of entries and declarations for all races. The racing secretary, employees of their department, or racing officials shall not disclose any pertinent information

concerning entries which have been submitted until all entries are closed. After an entry to a race for which conditions have been published has been accepted by the racing secretary or their delegate, no condition of such race shall be changed, amended or altered, nor shall any new condition for such race be imposed.

3. Entries. No horse shall be entered in more than one race on the same day. No person shall enter or attempt to enter a horse for a race unless such entry is a bona fide entry made with the intention that such horse is to compete in the race for which entry is made except, if racing conditions permit, for entry back in finals or consolations involving physically disabled or dead qualifiers for purse payment purposes. Entries shall be in writing on the entry card provided by the organization and must be signed by the trainer or assistant trainer of the horse. Entries made by telephone are valid properly confirmed by the track when signing the entry card. No horse shall be allowed to start unless the entry card has been signed by the trainer or his assistant trainer.

4. Determining Eligibility. Determination of a horse's eligibility, penalty or penalties and the right to allowance or allowances for all races shall be from the date of the horse's last race unless the conditions specify otherwise. The trainer is responsible for the eligibility of his horse and to properly enter his horse in condition. In the event the records of the Racing Secretary or the appropriate breed registry do not reflect the horse's most recent starts, the trainer or owner shall accurately provide such information. If a horse is not eligible under the first condition of any race, he cannot be eligible under subsequent conditions. If the conditions specify nonwinners of a certain amount, it means that the horse has not won a race in which the winner's share was the specified amount or more. If the conditions specify nonearners of a stated amount, it means that the horse has not earned that stated amount in any total number of races regardless of the horse's placing.

5. Entries Survive With Transfer. All entries and rights of entry are valid and survive when a horse is sold with his engagements duly transferred. If a partnership agreement is properly filed with the Horsemen's Bookkeeper, subscriptions, entries and rights of entry survive in the remaining partners. Unless written notice to the contrary is filed with the stewards, the entries, rights of entry, and engagements remain with the horse and are transferred therewith to the new owner. No entry or right of entry shall become void on the death of the nominator unless the conditions of the race state otherwise.

6. Horses Ineligible To Start In A Race. In addition to any other valid ground or reason, a horse is ineligible to start any race if:

A. Such horse is not registered by The Jockey Club if a Thoroughbred; the American Quarter Horse Association if a Quarter Horse; the Appaloosa Horse Club if an Appaloosa; the Arabian Horse Club Registry of America if an Arabian; the American Paint Horse Association if a Paint; the Pinto Horse Association of America, Inc., if a Pinto; or any successors to any of the foregoing or other registry recognized by the Commission.

B. The Certificate of Foal Registration, eligibility papers, or other registration issued by the official registry for such horse is not on file with the racing secretary one hour prior to post time for the race in which the horse is scheduled to race.

C. Such horse has been entered or raced at any recognized race meeting under any name or designation other than the name or designation duly assigned by and registered with the official registry.

D. The Win Certificate, Certificate of Foal Registration, eligibility papers or other registration issued by the official registry has been materially altered, erased, removed, or forged.

E. Such horse is ineligible to enter said race, is not duly entered for such race, or remains ineligible to time of starting.

F. The trainer of such horse has not completed the prescribed licensing procedures required by the Commission before entry and the ownership of such horse has not completed the prescribed licensing procedures prior to the horse starting or the horse is in the care of an unlicensed trainer.

G. Such horse is owned in whole or in part or trained by any person who is suspended or ineligible for a license or ineligible to participate under the rules of any Turf Governing Authority or Stud Book Registry.

H. Such horse is a suspended horse.

I. Such horse is on the stewards' list, starter's list, or the veterinarian's list.

J. Except with permission of the stewards and identifier, the identification markings of the horse do not agree with identification as set forth on the registration certificate to the extent that a correction is required from the appropriate breed registry.

K. A horse has not been lip tattooed by a Commission approved tattooer.

L. The entry of a horse is not in the name of his true owner.

M. The horse has drawn into the field or has started in a race on the same day.

N. Its age as determined by an examination of its teeth by the official veterinarian does not correspond to the age shown on its registration certificate, such determination by tooth examination to be made in accordance with the current "Official Guide for Determining the Age of the Horse" as adopted by the American Association of Equine Practitioners.

7. Horses Ineligible To Enter Or Start. Any horse ineligible to be entered for a race or ineligible to start in any race which is entered or competes in such race, may be scratched or disqualified; and the stewards may discipline any person responsible.

8. Registration Certificate To Reflect Correct Ownership. Every certificate of registration, eligibility certificate or lease agreement filed with the organization and its racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of such horse, and the name of the owner which is printed on the official program for such horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate. A stable name may be registered for such owner or ownership with the Commission. In the event ownership is by syndicate, corporation, partnership or other association or entity, the name of the owner which is printed on the official program for such shall be the responsible managing owner, officer, or partner who assumes all responsibilities as the owner.

9. Alteration Or Forgery Of Certificate Of Registration. No person shall alter or forge any win sheet, certificate of registration, certificate of eligibility, or any other document of ownership or registration, nor willfully forge or alter the signature of any person required on any such document or entry card.

10. Declarations And Scratches. Any trainer or assistant trainer of a horse which has been entered in a race who does not wish such horse to participate in the draw must declare his horse from the race prior to the close of entries. Any trainer or assistant trainer of a horse which has been drawn into or is also eligible for a race who does not wish such horse to start in the race, must scratch his horse from the race prior to the designated scratch time. The declaration or scratch of a horse from a race is irrevocable.

11. Deadline For Arrival Of Entered Horses. All horses scheduled to compete in a race must be present within the enclosure no later than 30 minutes prior to their scheduled race without stewards' approval. Horses not within the enclosure by their deadline may be scratched and the trainer subject to fine and/or suspension.

12. Refund Of Fees. If a horse is declared or scratched from a race, the owner of such horse shall not be entitled to a refund of any nomination, sustaining and penalty payments, entry fees, or organization charges paid or remaining due at the time of the declaration or scratch. In the event any race is not run, declared off, or canceled for any reason, the owners of such horses that remain eligible at the time the race is declared off or canceled shall be entitled to a complete refund of all the above payments and fees less monies specified in written race conditions for advertising and promotion.

13. Release Of Certificates. Any certificate of registration or document of ownership filed with the racing secretary to establish eligibility to enter a race shall be released only to the trainer of record of the horse. However, the trainer may authorize in a form provided by the racing secretary the release of the certificate to the owner named on the certificate or his authorized agent. Any disputes concerning the rights to the registration certificates shall be decided by the stewards.

14. Nomination Races. Prior to the closing of nominations, the organization shall file with the Commission a copy of the nomination blank and all advertisements for races to be run during a race meeting. For all races which nominations close no earlier than 72 hours before post time, the organization shall furnish the Commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a list of all horses nominated and which remain eligible. The list shall be distributed within 15 days after the due date of each payment and shall include the horse's name, the owner's name and the total amount of payments and gross purse to date, including any added monies, applicable interest, supplementary payments, and deduction for advertising and administrative expenses. The organization shall deposit all monies for a nomination race in an escrow account according to procedures approved by the Commission.

15. Limitations On Field And Number Of Races. No race with less than two horses entered and run, shall be approved by the UHRC. No more than 20 races may be run on a race day, except with permission of the Commission. A race day may be canceled if less than 75 horses have been entered on the day's program, with the exception of days on which trials or finals for a nomination race are scheduled.

16. Agreement Upon Entry. No entry shall be accepted in any race except upon the condition that all disputes, claims, and objections arising out of the racing or with respect to the interpretation of Commission and track rules or conditions of any race shall be decided by the Board of Stewards at the race meet; or, upon appeal, decided by the Commission.

17. Selection Of Entered Horses. The manner of selecting post positions of horses shall be determined by the stewards. The selection shall be by lot and shall be made by one of the stewards or their designee and a horseman, in public, at the close of entries. If the number of entries to any race is in excess of the number of horses which may, because of track limitations, be permitted to start in any one race, the race may be split; or four horses not drawing into the field may be placed on an also eligible list.

18. Preferred List Of Horses. The racing secretary may maintain a list of entered horses eliminated from starting by a surplus of entries, and these horses shall constitute a preferred list and have preference. The manner in which the preferred list shall be maintained and all rules governing such list shall be the responsibility of the Racing Secretary. Such rules must be submitted to the Commission 30 days prior to the commencement of the meet and are subject to approval by the Commission.

#### **R52-7-8. Veterinarian Practices, Medication and Testing Procedures.**

1. Veterinary Practices - Treatment Restricted. Within the

time period of 24 hours prior to the post time for the first race of the week until four hours after the last race of the week, no person other than Utah licensed veterinarians or animal technicians under direct supervision of a licensed veterinarian who have obtained a license from the Commission shall administer to any horse within the enclosure any veterinary treatment or any medicine, medication, or other substance recognized as a medication, except for recognized feed supplements or oral tonics or substances approved by the Official Veterinarian.

2. Veterinarians Under Supervision Of Official Veterinarian. Veterinarians licensed by the Commission and practicing at an authorized meeting are under the supervision of the Official Veterinarian and the Stewards. The Official Veterinarian shall recommend to the Stewards or the Commission the discipline to be imposed upon a veterinarian who violates the Rules, and he or she may sit with the Stewards in any hearing before the Stewards concerning such discipline or violation.

3. Veterinarian Report. Every veterinarian who treats any horse within the enclosure for any contagious or communicable disease shall immediately report to the official veterinarian in writing on a form approved by the Commission. The form shall include the name and location of the horse treated, the name of the trainer, the time of treatment, the probable diagnosis, and the medication administered. Each practicing veterinarian shall be responsible for maintaining treatment records on all horses to which they administer treatment during a given race meeting. These records shall be available to the Commission upon subpoena when required. Any such record and any report of treatment as described above is confidential; and its content shall not be disclosed except in a proceeding before the stewards or the Commission, or in the exercise of the Commission's jurisdiction.

4. Drugs Or Medication. Except as authorized by the provisions of this Article, no drug or medication shall be administered to any horse prior to or during any race. Presence of any drug or its metabolites or analogs, or any substance foreign to the natural horse found in the testing sample of a horse participating in a Commission-sanctioned race which are outside of the approved drug threshold levels set forth by California Horse Racing Board (CHRB) Rule No. 1844 (Effective 02/14/12), Authorized Medication, with sections (h)(2),(e)(9) and (f) exempted, hereby incorporated by reference, shall result in disqualification by the Stewards. Accordingly clenbuterol will be treated the same as all other drugs that are not specifically authorized. If the testing laboratory detects clenbuterol or its metabolites or analogs under the laboratory's standard operating procedures, the finding will be reported as a violation. When a horse is disqualified because of an infraction of this Rule, the owner or owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. (See Drugs and Medications Exceptions, Section R67-7-13.)

5. Racing Soundness Examination. Each horse entered to race may be subject to a veterinary examination by the official veterinarian or his authorized representative for racing soundness and health on race day.

6. Positive Lab Reports. A finding by a licensed laboratory that a test sample taken from a horse contains a drug or its metabolites or analog, or any substance foreign to the natural horse shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, saliva, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all procedures of same collection and preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the

report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which he was entered, with the burden on the trainer, assistant trainer or other responsible party to prove otherwise at any hearing in regard to the matter conducted by the stewards or the Commission.

7. Intent Of Medication Rules. It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medication, and substances foreign to the natural horse.

8. Power To Have Tested. As a safeguard against the use of drugs, medication, and substances foreign to the natural horse, a urine or other acceptable sample shall be taken under the direction of the official veterinarian from the winner of every race and from such other horses as the stewards or the Commission may designate.

9. Pre-Race Testing. The stewards may require any horse entered to race to submit to a blood or other pre-race test, and no horse is eligible to start in a race until the owner or trainer complies with the required testing procedure.

10. Equipment For Official Testing. Organizations shall provide the equipment, necessary supplies and services prescribed by the Commission and the official veterinarian for the taking of or administration of blood, urine, saliva or other tests.

11. Taking Of Samples. Blood, urine, saliva or other samples shall be taken under the direction of the official veterinarian or persons appointed or assigned by the official veterinarian for taking samples. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. Each horse shall be cooled out for a minimum of 30 minutes after entry into the test barn before a sample is to be taken. The taking of any test samples shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or his authorized representative or employee, and may be witnessed by the owner, trainer, or other licensed person designated by them. Samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may direct. All required samples shall be in the custody of the official veterinarian, his/her assistants or other persons approved by the official veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory. No person shall tamper with, adulterate, add to, break the seal of, remove or otherwise attempt to so alter or violate any sample required to be taken by this Article, except for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample or in the process of analysis.

The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered in violation of these Rules to the horse earning such purse money.

12. Laboratories Approved By The Commission. Only laboratories approved by the Commission may be used in obtaining analysis reports on urine, or other specimens, taken from the winners or other designated horses of each race meeting. The Commission and the Board of Stewards shall receive reports directly from the laboratory.

13. Split Samples. As determined by the official veterinarian, when sample quantity permits, each test sample shall be divided into two portions so that one portion shall be used for the initial testing for unknown substances. If the Trainer or owner so requests in writing to the stewards within 48 hours of notice of positive lab report on the test sample of his

horse, the second sample shall be sent for further testing to a drug testing laboratory designated and approved by the commission. Nothing in this rule shall prevent the commission or executive director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse as per R52-7-8-4 and R52-7-8-6. All costs for transportation and testing of the second sample portion shall be the responsibility of the requesting person. The official veterinarian shall have overall supervision and responsibility for the freezing, storage and safeguarding of the second sample portion.

14. Facilitating The Taking Of Urine Samples. When a horse has been in the test barn more than 1-1/2 hours, a diuretic may be administered by the Official Veterinarian for the purpose of facilitating the collection of a urine sample with permission of the stewards and the trainer or the trainer's authorized test barn representative. The cost of administration of the diuretic is the responsibility of the trainer. Prior to the administration of a diuretic, a blood sample may be taken from the horse.

15. Postmortem Examination. Every horse which dies or suffers a breakdown on the racetrack in training or in competition within any enclosure licensed by the Commission and is destroyed, may undergo, at a time and place acceptable to the official veterinarian, a postmortem examination to the extent reasonably necessary to determine the injury or sickness which resulted in euthanasia or natural death. Any other horse which expires within any enclosure may be required by the official veterinarian to undergo a postmortem examination.

A. The postmortem examination required under this rule will be conducted by a licensed veterinarian employed by the owner or his trainer in consultation with the official veterinarian, who may be present at such postmortem examination.

B. Test samples may be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the Commission for testing for foreign substances or their metabolites and natural substances at abnormal levels. When practical, samples shall be procured prior to euthanasia.

C. The owner of the deceased horse shall make payment of any charges due the veterinarian employed by him to conduct the postmortem examination.

D. A record of such postmortem shall be filed with the official veterinarian by the owner's veterinarian within 72 hours of the death and shall be submitted on a form supplied by the Commission.

E. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupation license issued by the Commission.

#### **R52-7-9. Running the Race.**

1. Jockeys To Report. Every jockey engaged to ride in a race shall report to the jockey room at least one hour before post time of the first race and shall weigh out at the appointed time unless excused by the stewards. After reporting, a jockey shall not leave the jockey room until all of their riding engagements have been fulfilled and/or unless excused by the stewards.

2. Entrance To Jockey Room Prohibited. Except with permission of the stewards or the Commission, no person shall be permitted entrance into the jockey room from one hour before post time for the first race until after the last race other than jockeys, their attendants, racing officials and security officers on duty, and organization employees performing required duties.

3. Weighing Out. All jockeys taking part in a race must be weighed out by the Clerk of Scales no more than one hour preceding the time designated for the race. Any overweight in excess of one pound shall be declared by the jockey to the Clerk

of Scales, who shall report such overweight and any change in jockeys to the Stewards for immediate public announcement. A jockey's weight includes the riding costume, racing saddle and pad; but shall not include the jockey's safety helmet, whip, the horse's bridle or other regularly approved racing tack. A jockey must be neat in appearance and must wear a conventional riding costume.

4. Unruly Horses In The Paddock. If a horse is so unruly in the saddling paddock that the identifier cannot read the tattoo number and properly identify the horse; or if the trainer or their assistant is uncooperative in the effort to identify the horse, then the horse may be scratched by order of the stewards.

5. Use Of Equipment. No bridle shall weigh more than two pounds, nor shall any whip weigh more than one pound or be more than 31 inches in length. No whip shall be used unless it shall have affixed to the end thereof a leather "popper." All whips are subject to inspection and approval by the stewards. Blinkers are not to be placed on the horse until after the horse has been identified by the official identifier, except with permission of the stewards.

6. Prohibited Use Of Equipment. Jockeys are prohibited from whipping a horse excessively, brutally, or upon the head, except when necessary to control the horse. No mechanical or electrical devices or appliances other than the ordinary whip shall be possessed by any individual or used on any horse at any time a race meeting, whether in a race or otherwise.

7. Responsibility For Weight. The jockey, trainer and owner shall be responsible for the weight carried by the horse after the jockey has been weighed out for the race by the clerk of scales. The trainer or owner may substitute a jockey when the engaged jockey reports an overweight in excess of two pounds.

8. Safety Equipment Required. All persons, when mounted on a race horse within the enclosure or riding in a race, shall wear a properly fastened safety helmet and flak jacket. The Commission or the stewards may require any other person to wear such helmet and jacket when mounted on a horse within the enclosure. All safety helmets and flak jackets so required are subject to approval of the stewards or Commission.

9. Display Of Colors And Post Position Numbers. In a race, each horse shall carry a conspicuous saddle cloth number, and the jockey shall wear racing colors consisting of long sleeves and a numbered helmet cover corresponding to the number of the horse which are furnished by the organization licensee.

10. Deposit Of Jockey Fee. The minimum jockey mount fee for a losing mount in the race must be on deposit with the horsemen's bookkeeper, prior to the time for weighing out, and failure to have such minimum fee on deposit is cause for disciplinary action and cause for the stewards to scratch the horse for which such fee is to be deposited. The organization assumes the obligation to pay the jockey fee when earned by the engaged jockey. The jockey fee shall be considered earned when the jockey is weighed out by the clerk of scales, unless, in the opinion of the stewards, such jockey capable of riding elect to take themselves off the mount without proper cause.

11. Requirements For Horse, Trainer, And Jockey. Every horse must be in the paddock at the time appointed by the stewards before post time for their race. Every horse must be saddled in the paddock stall designated by the paddock judge unless special permission is granted by the stewards to saddle elsewhere. Each trainer or their assistant trainer having the care and custody of such horse shall be present in the paddock to supervise the saddling of the horse and shall give such instructions as may be necessary to assure the best performance of the horse. Every jockey participating in a race shall give their best effort in order to facilitate the best performance of their horse.

12. Failure To Fulfill Jockey Engagements. No jockey engaged for a certain race or for a specified time may fail or

refuse to abide by his or her agreement unless excused by the stewards.

13. Control And Parade Of Horses On The Track. The horses are under the control of the starter from the time they enter the track until dispatched at the start of the race. All horses with jockey mounted shall parade and warm up carrying their weight and wearing their equipment from the paddock to the starting gate, as well as to the finish line. Any horse failing to do so may be scratched by the stewards. After passing the stands at least once, the horses may break formation and warm up until directed to proceed to the starting gate. In the event a jockey is injured during the parade to post or at the starting gate and must be replaced, the horse shall be returned to the paddock and resaddled with the replacement jockey's equipment. Such horse must carry the replacement jockey to the starting gate.

14. Start Of The Race. When the horses have reached the starting gate, they shall be placed in their starting gate stalls in the order stipulated by the starter. Except in cases of emergency, every horse shall be started by the starter from a starting gate approved by the Commission. The starter shall see that the horses are placed in their proper positions without unnecessary delay. Causes for any delay in the start shall immediately be reported to the stewards. If, when the starter dispatches the field, the doors at the front of the starting gate stall should not open properly due to a mechanical failure of malfunction of the starting gate, the stewards may declare such horse to be a nonstarter. Should a horse which is not previously scratched not be in the starting gate stall thereby causing such horse to be left when the field is dispatched by the starter, such horse shall be declared a nonstarter by the stewards.

15. Leaving The Race Course. Should a horse leave the course while moving from the paddock to starting gate, he shall return to the course at the nearest practical point to that at which he left the course, and shall complete his parade to the starting gate from the point at which he left the course. However, should such horse leave the course to the extent that he is out of the direct line of sight of the stewards, or if such horse cannot be returned to the course within a reasonable amount of time, the stewards shall scratch the horse. Any horse which leaves the course or loses its jockey during the running of a race shall be disqualified and may be placed last, or the horse may be unplaced.

16. Riding Rules. In a straightaway race, every horse must maintain position as nearly as possible in the lane in which he starts. If a horse is ridden, drifts, or swerves out of their lane in such a manner that he interferes with or impedes another horse, it is a foul. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged; and if in the opinion of the stewards a foul is committed as a result of a jockey not making his best effort to control and guide their mount to avoid a foul, whether intentionally or through carelessness or incompetence, such jockey may be penalized at the discretion of the stewards.

17. Stewards To Determine Fouls And Extent Of Disqualification. The stewards shall determine the extent of interference in cases of fouls or riding infractions. They may disqualify the offending horse and place it behind such other horses as in their judgment it interfered with, or they may place it last. The stewards may determine that a horse shall be unplaced.

18. Careless Riding. A jockey shall not ride carelessly or willfully so as to permit his or her mount to interfere with or impede any other horse in the race. A jockey shall not willfully strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified and/or the jockey may be fined and/or suspended, or otherwise disciplined.

19. Ramifications Of A Disqualification. When a horse is disqualified by the stewards, every horse in the race owned wholly or in part by the same owner, or trained by the same trainer, may be disqualified. When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus 0.01 of a second penalty, or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

20. Dead Heat. When a race results in a dead heat, the heat shall not be run off. The purse distribution due the horses involved in the dead heat shall be divided equally between them. All prizes or trophies for which a duplicate is not awardable shall be drawn for by lot.

21. Returning To The Finish After The Race. After the race, the jockey shall return their horse to the finish and before dismounting, salute the stewards. No person shall assist a jockey in removing from their horse the equipment that is to be included in the jockey's weight except by permission of the stewards. No person shall throw any covering over any horse at the place of dismounting until the jockey has removed the equipment that is to be included in his weight.

22. Objection - Inquiry Concerning Interference. Before the race has been declared official, a jockey, trainer or their assistant trainer, owner or their authorized agent of the horse, who has reasonable grounds to believe that their horse was interfered with or impeded or otherwise hindered during the running of a race, or that any riding rule was violated by any jockey or horse during the running of the race, may immediately make a claim of interference or foul with the stewards or their delegate. The stewards shall thereupon hold an inquiry into the running of the race; however, the stewards may upon their own motion conduct an inquiry into the running of a race. Any claim of foul, objection, and/or inquiry shall be immediately announced to the public.

23. Official Order Of Finish. When satisfied that the order of finish is correct, that all jockeys unless excused have been properly weighed in, and that the race has been properly run in accordance with the rules of the Commission, the Stewards shall declare that the order of finish is official; and it shall be announced to the public, confirmed, and the official order of finish posted for the race.

24. Time Trial Qualifiers. When two or more time trial contestants have the same qualifying time, to a degree of .001 of a second, or more exact measurement if photo finish equipment permits, for fewer positions in the finals or consolation necessary for all contestants, then a draw by lot will be conducted in accordance with Subsection R52-7-7(17). However, no contestant may draw into a finals or consolation instead of a contestant which out finished such contestant. When scheduled races are trial heats for futurities or stakes races electronically timed from the starting gates, no organization licensee shall move the starting gates or allow the starting gates to be moved until all trial heats are complete, except in an emergency as determined by the stewards.

#### **R52-7-10. Objections and Protests; Hearing and Appeals.**

1. Stewards To Make Inquiry Or Investigation. The stewards shall make diligent inquiry or investigation into any complaint, objection or protest made either upon their own motion, by any Racing Official, or by any other person empowered by this Article to make such complaint, protest or objection.

2. Objections. Objections to the participation of a horse entered in any race shall be made to the stewards in writing and signed by the objector. Except for claim of foul or interference, an objection to a horse entered in a race shall be made not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered. Any such

objection shall set forth the specific reason or grounds for the objection in such detail so as to establish probable cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter. An objection concerning claim of foul in a race may be lodged verbally to the stewards before the race results are declared official.

3. Grounds For Objections. An objection to a horse which is entered in a race shall be made on the following grounds or reasons:

A. A misstatement, error or omission in the entry under which a horse is to run.

B. That the horse which is entered to run is not the horse it is represented to be at the time of entry, or that the age is erroneously given.

C. That the horse is not qualified to enter under the conditions specified for the race, or that the allowances are improperly claimed or not entitled to the horse, or that the weight to be carried is incorrect under the conditions of the race.

D. That the horse is owned in whole or in part, or leased by a person ineligible to participate in racing or otherwise ineligible to run a race as provided in these Rules.

E. That reasonable grounds exist whereby a horse was interfered with or impeded or otherwise hindered by another horse or jockey during the running of a race.

4. Horse Subject To Objection. The stewards may scratch from the race any horse which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

5. Protests. A protest against any horse which has started in a race shall be made to the stewards in writing, signed by the protestor, within 48 hours of the race, except as noted in Subsection R52-7-10(8). Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for protest. The stewards upon their own motion may consider a protest at any time.

6. Grounds For Protest. A protest may be made upon the following grounds:

A. Any ground for objection set forth in R52-1-10(3).

B. That the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers designated to the horses which started in the race.

C. That a jockey, trainer or owner of a horse which started in the race was ineligible to participate in racing as provided in these rules.

D. That the weight carried by a horse was improper by reason of fraud or willful misconduct.

E. That an unfair advantage was gained in violation of the rules.

7. Persons Empowered To File Objection Or Protest. A jockey, trainer, owner or authorized agent of the horse which is entered or is a starter in a race is empowered to file an objection or protest against any other horse in such race upon the grounds set forth in this Article for objections and protests.

8. No Limitation On Time To File When Fraud Alleged. Notwithstanding any other provision in this Article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged, provided that the stewards are satisfied that the allegations are bona fide and susceptible to verification.

9. Frivolous Or Inaccurate Objection Or Protest. No person shall knowingly file a frivolous, inaccurate, false, or untruthful objection or protest; nor shall any person present his objection or protest to the stewards in a disrespectful or undignified manner.

10. Horse To Be Disqualified On Valid Protest. If a protest against a horse which has run in a race is declared valid, that horse may be disqualified. A horse so disqualified which was a starter in the said race, may be placed last in the order of finish or may be unplaced. The stewards or the Commission

may order any purse, award or prize for any race withheld from distribution pending the determination of the protest(s). In the event any purse, award or prize has been distributed to a person on behalf of a horse which by protest or other reason is disqualified or determined not to be entitled to such purse, award or prize, the stewards or the Commission may order such purse, award or prize returned and redistributed to the rightful person. Any person who fails to comply with an order to return any purse, award or prize previously distributed shall be suspended until its return.

11. Notification Of And Representation At Hearing. Adequate notice of hearing shall be given to every summoned person in accordance with the procedures set forth in Subsection R52-7-3(6). Every person alleged to have committed a rule violation or who is called to testify before the stewards is entitled at the persons expense to have counsel present evidence and witnesses on his behalf and to cross-examine other witnesses at the hearing.

12. Testimony And Evidence At Hearing. Every person called to a hearing before the stewards for a rule violation shall be allowed to present testimony, produce witnesses, cross-examine witnesses, and present documentary evidence in accordance with the rules of privilege recognized by law.

13. Duty Of Disclosure. It is the duty and obligation of every licensee to make full disclosure at a hearing before the Commission or before the stewards of any knowledge he or she possesses of a violation of any racing law or of the rules of the Commission. No person may refuse to testify at any hearing on any relevant matter except in the proper exercise of a legal privilege, nor shall any person testify falsely.

14. Failure To Appear. Any licensee or summoned person who fails to appear before the stewards or the Commission after they have been ordered personally or in writing to do so, may be suspended pending appearance before the stewards or the Commission. Nonappearance of a summoned person after adequate notice may be construed as a waiver of right to be present at a hearing.

15. Record Of Hearing. All hearings before the stewards or Commission shall be recorded. That portion at a hearing constituting deliberations in executive session need not be recorded. A written transcript or a copy of the tape recording shall be made available to any person alleged to have committed a violation of the Act or the rules upon written request and payment of appropriate reimbursement cost(s) for transcription or reproduction.

16. Vote On Steward's Decision. A majority vote shall decide any question to which the authority of the stewards extends. If a vote is not unanimous, the dissent steward shall provide a written record to the Commission of the reasons for such dissent within 72 hours of the vote.

17. Rulings By The Stewards. Any ruling or order issued by the stewards shall specify the full name of the licensee or person subject to the ruling or order; most recent address on file with the Commission; date of birth; social security number; statement of the offense charged including any rule number; date of ruling; fine and/or suspension imposed or other action taken; changes in the order of finish and purse distribution in a race, when appropriate; and any other information deemed necessary by the stewards or the Commission. Any member of a Board of Stewards may, after consultation with and by mutual agreement of the other stewards, issue an Order or Notice signed by one steward on behalf of the Board of Stewards. Subsequently, an Order containing all three stewards' signatures shall be made part of the official record.

18. Summary Suspension Of Occupation Licensee. If the stewards or the Commission find that the public health, safety, or welfare require emergency action and incorporates such finding to that effect in any Order, summary suspension may be ordered pending proceedings for revocation or other action,

which proceedings shall be promptly initiated and held as provided in Subsection R52-7-10(19).

19. Duration Of Suspension Or Revocation. Unless execution of an order of suspension or revocation is stayed by the Commission or a court of competent jurisdiction, a person's occupation license, suspended or revoked, shall remain suspended or revoked until the final determination has been made pursuant to the provisions of Section R52-7-5.

20. Grounds For Appeal From Decision Of The Stewards. Any decision of the stewards, except decisions regarding disqualifications for interference during the running of a race, may be appealed to the Commission; and such decision may be overruled if it is found by a preponderance of evidence that:

A. The stewards mistakenly interpreted the law; or

B. The Appellant produces new evidence of a convincing nature which, if found to be true, would require the overruling of the decision; or

C. The best interests of racing and the State may be better served.

21. Appeal From Decision Of The Stewards. The Commission shall review hearings of any case referred to the Commission by the stewards or appealed to the Commission from the decisions of the stewards except as otherwise provided in this Article. Upon every appealable decision of the stewards, the person subject to the decision or Order shall be made aware of his right to an appeal before the Commission and the necessary procedures thereof. Appeals shall be made no later than 72 hours or the third calendar day from the date of the rendering of the decision of the stewards unless the Commission for good cause extends the time for filing not to exceed 30 days from said rendering date. The appeal shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; and shall set forth the facts and any new evidence the appellant believes to be grounds for an appeal before the Commission. Action on such a hearing request must commence by the Commission within 30 days of the filing of the appeal. An appeal shall not affect a decision of the stewards until the appeal has been sustained or dismissed or a stay order issued.

22. Appointment Of Hearing Examiners. When directed by the Commission, any qualified person(s) may sit as a hearing examiner(s) for the taking of evidence in any matter pending before the Commission. Any such hearing examiner shall report to the Commission Findings of Fact and Conclusions of Law, and the Commission shall determine the matter as if such evidence had been presented to the full Commission.

23. Hearings On Agreement. Persons aggrieved as of the result of a stewards' ruling in a preliminary or trial race may request a hearing before the executive director of the Commission to review same. If all interested parties waive the right to receive ten day notice of hearing, such a hearing may be heard on a day certain within seven days after the preliminary or trial race in question. All such appeals shall be heard on days set by the executive director of the Commission or anyone acting in his stead.

24. Temporary Stay Order. The Executive Director may, upon consultation with the direction of a minimum of three Commissioners, issue or deny a temporary stay order to stay execution of any ruling, order or decision of the stewards except stewards' decisions regarding disqualifications for interference during the running of a race. Any application for a temporary stay shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; shall set forth the facts and any evidence to justify the issuance of the stay; and shall be filed with the Office of the Commission as specified in Subsection R52-7-3(7). The granting of a temporary stay order shall carry no presumption that the stayed decision of the stewards is or may be invalid, and a temporary stay order may be dissolved at any time by further

order of the executive director upon consultation with and the direction of a minimum of three Commissioners.

25. Appearance At Hearing Upon Appeal. The Commission shall notify the Appellant and the stewards of the date, time and location of its hearing in the matter upon appeal. The burden shall be on the appellant to provide the facts necessary to sustain the appeal.

26. Complaints Against Officials. Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the Commission by the stewards, together with a report of the action taken or the recommendation of the stewards. Complaints against any stewards shall be made in writing to the executive director of the Commission and signed by the complainant.

27. Rulings On Admissibility And Evidence. In all hearings, the chairperson, chief steward or such other person as may be designated, shall make rulings on admissibility and introduction of evidence. Such a ruling shall prevail; except when a Commission member or a steward requests a poll of the panel, and the ruling overturned by majority vote.

### **R52-7-11. General Conduct.**

1. Conditions Of Meeting Binding Upon Licensees. The Commission, recognizing the necessity for an organization to comply with the requirements of its license and to fulfill its obligation to the public and the State of Utah with the best possible uninterrupted services in the comparatively short licensed period, herein provides that all organizations, officials, horsemen, owners, trainers, jockeys, grooms, farriers, organization employees, and all licensees who have accepted directly or indirectly, with reasonable advance notice, the conditions defined by these rules under which said organization engages and plans to conduct such race meeting, shall be bound thereby.

2. Trainer Responsibility. The trainer is presumed to know the "Rules of Racing" and is responsible for the condition, soundness, and eligibility of the horses he enters in a race. Should the chemical analysis, urine or otherwise, taken from a horse under his supervision show the presence of any drug or medication of any kind or substance, whether drug or otherwise, regardless of the time it may have been administered, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the trainer or person or persons under his supervision having care or custody of such horse. At the discretion of the stewards or Commission, the trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both. Under the provisions of this rule, the trainer is also responsible for any puncture mark on any horse he enters in a race, found by the stewards upon recommendation of the official veterinarian to evidence injection by syringe. If the trainer cannot be present on race day, he shall designate an assistant trainer. Such designation shall be made prior to time of entry, unless otherwise approved by the stewards. Failure to fully disclose the actual trainer of a horse participating in an approved race shall be grounds to disqualify the horse, and subject the actual trainer to possible disciplinary action by the stewards or the Commission. Designation of an assistant trainer shall not relieve the trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the assistant trainer under such absolute responsibility also. Willful failure on the part of the trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred to the stewards for further action.

3. Altering Sex Of Horse. Any alteration to the sex of a horse from the sex as recorded on the Certificate of Foal Registration or other official registration Certificate of such

horse shall be immediately reported by the trainer to the racing secretary and the official horse identifier if such horse is registered to race at any race meeting.

4. Official Workouts And Schooling Races. No trainer shall permit a horse in his charge to be taken on to the track for training or a workout except during hours designated by the organization. A trainer desiring to engage a horse in a workout or schooling race shall, prior to such workout or race, identify the horse by registered name and tattoo number when requested to do so by the stewards or their authorized representative.

5. Intoxication. No licensee, employee of the organization or its concessionaires, shall be under the influence of intoxicating liquor, the combined influence of intoxicating liquor and any controlled dangerous substance, or under the influence of any narcotic or other drug while within the enclosure. No person shall in any manner or at any time disturb the peace or make themselves obnoxious on the enclosure of an organization.

6. Firearms. No person shall possess any firearm within the enclosure unless he is a fully qualified peace officer as defined in the laws of the State of Utah, or is acting in accordance with Title 53, Chapter 5, Part 7, Concealed Weapons Act and Title 76, chapter 10, Part 5, Utah Code. A person carrying a concealed weapon may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.

7. Financial Responsibility. No licensee shall willfully and deliberately fail or refuse to pay any monies when due for any service, supplies or fees connected with his operations as a licensee; nor shall he falsely deny any such amount due or the validity of the complaint thereof with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due. A commission authorized license may be suspended pending settlement of the financial obligation. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due, or by a judgment from a court.

8. Checks. No licensee shall write, issue, make or present a bad check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies. The fact that such check is returned to the payee by the bank as refused is a ground for suspension pending satisfactory redemption of the returned check.

9. Gratuity To Starter Or Assistant Starter. No person shall offer or give money or other gratuity to any starter or assistant starter, nor shall any starter or assistant starter receive money or other compensation, gratuity or reward, in connection with the running of any race or races except compensation received from an organization for official duties.

10. Possession Of Contraband. No person other than a veterinarian or an animal technician licensed by the Commission shall have in his possession within the enclosure during sanctioned meetings any prohibited substance, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection except as provided in Subsection R52-7-8(1). No person shall have in his or her possession within the enclosure during any recognized meeting any device other than the ordinary whip which can be used for the purpose of stimulating or depressing the horse or affecting its speed at any time. The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose.

11. Bribes. No person shall give, or offer or promise to give, or attempt to give or offer any money, bribe or thing of value to any owner, trainer, jockey, agent, or any other person participating in the conduct of a race meeting in any capacity, with the intention, understanding or agreement that such owner, trainer, jockey, agent or other person shall not use his best



efforts to win a race or so conduct himself in such race that any other participant in such race shall be assisted or enabled to win such race; nor shall any trainer, jockey, owner, agent or other person participating at any race meeting accept, offer to accept, or agree to accept any money, bribe or thing of value with the intention, understanding or agreement that he will not use his best efforts to win a race or to so conduct himself that any other horse or horses entered in such race shall thereby be assisted or enabled to win such race.

12. **Trainer's Duty To Ensure Licensed Participation.** No trainer shall have in his custody within the enclosure of any race meeting any horse owned in whole or in part by any person who is not licensed as a horse owner by the Commission unless such owner has filed an application for license as a horse owner with the Commission and the same is pending before the Commission; nor shall any trainer have in his employ within the enclosure any groom, stable employee, stable agent, or other person required to be licensed, unless such person has a valid license. All changes of commissioned licensed personnel shall be reported immediately to the Commission.

13. **Conduct Detrimental To Horse Racing.** No licensee shall engage in any conduct prohibited by law and by the rules of the Commission, nor shall any licensee engage in any conduct which by its nature is unsportsmanlike or detrimental to the best interest of horse racing.

14. **Denial Of Access To Private Property.** Nothing contained in these rules shall be deemed, expressly or implicitly, to prevent an organization from exercising the right to deny access to or to remove any person from the organization's premises or property for just cause.

15. **Tricks/Schemes.** No person shall falsify, conceal, or cover up by trick, scheme, or device a material fact; or make any false, fictitious, or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry regarding the prior racing record, pedigree, identity, or ownership of a registered animal in any matter related to the breeding, buying selling, or racing of such animal.

16. **Prearranging The Outcome Of A Race.** No licensed or unlicensed person may attempt or conspire to prearrange the outcome of a race.

#### **R52-7-12. Fire Prevention and Security.**

1. **Security Control.** Every organization conducting a race meeting shall maintain security controls over its premises, and such security controls are subject to the approval of the Commission.

2. **Identification Required.** No person shall be admitted to a restricted area within the enclosure without a license, visitor's pass, or other identification issued by the Commission or the organization on his person. Whenever deemed advisable, the stewards or the organization may require the visible display of the identification as a badge. No person shall use the license or credential issued to another, nor shall any person give or loan his license or credential to any other person.

3. **Organization Credentials.** The racing organization shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its meeting are licensed as required by this Article; provided, however, that no such system or methods may exclude any investigator or employee of the Commission or any peace officer when on duty; nor shall any person be excluded solely on the basis of sex, color, creed, or national origin or ancestry.

4. **Organization To Prevent Unauthorized Access To Restricted Areas.** Unless granted exemption by the Commission, every organization shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's

pass or other identifying credential, or whose presence in such restricted area is unauthorized. Nothing herein shall be construed to exclude members of the Commission and any staff members of the Commission in the conduct of official duties.

5. **Examination Of Personal Effects.** The Commission, its authorized officers or agents may enter the stables, rooms, or other places within the premises of a recognized meeting to inspect and examine the personal effects and property of any licensee or other person in or about or permitted access to any restricted area; and each licensee in accepting his license, and each person entering such restricted area does thereby consent thereto.

6. **Obedience To Security Officers And Public Safety Officers.** No licensee shall willfully ignore or refuse to obey any order issued by the stewards; the Commission; or any security officer of the organization; or any public officer of any police, fire or law enforcement agency when such order is issued or given in the performance of duty for the purpose of controlling any hazardous situation or occurrence. No person shall interfere with public safety officers, security officers or any racing official in the performance of their duties.

#### **R52-7-13. Drugs and Medication Exceptions and Illegal Practices.**

1. **Horses Tested.** The winner of every race and such other horses as the stewards or commission veterinarian may designate shall be escorted by the veterinarian assistant after the race to the testing enclosure for examination by the authorized representative of the Commission and the taking of specimens shall be by the commission veterinarian or his assistant.

2. **Trainer Present at Testing.** The trainer, or his authorized representative, must be present in the testing enclosure when a urine or other specimen is taken from a horse, the sample tag attached to the specimen shall be signed by the trainer or his representative, as witness of taking of the specimen. Willful failure to be present at or a refusal to allow the taking of the specimen, or any act or threat to impede or prevent or otherwise interfere therewith, shall subject the person or persons doing so to immediate suspension and fine by the stewards and the matter shall be referred to the Commission for such further penalty as may be determined.

3. **Specimens Delivered to Laboratory.** All specimens taken by or under the direction of the commission veterinarian, or other authorized representative of the Commission, shall be delivered to the laboratory approved by the Commission for official analysis. Each specimen shall be marked by number and date and may also bear such information as may be essential to its proper analysis; but the identity of the horse from the specimen was taken or the identity of its owner, trainer, jockey or stable shall not be revealed to the laboratory. The container of specimen shall be sealed as soon as the specimen is placed therein and shall bear the name of the Commission.

4. **Medication.** The commission veterinarian, the Commission or any member of the Board of Stewards may take samples of any medicines or other materials suspected of containing improper medication, drugs or chemicals which would affect the racing conditions of a horse in a race and which may be found in stables or elsewhere on race track grounds or in the possession of such tracks or any person connected with racing and the same shall be delivered to the laboratory designated by the Commission.

5. **The Only Non-Steroidal Anti-Inflammatory Drug Permitted.** Phenylbutazone shall be administered to the horse no later than 24 hours prior to the time the horse is scheduled to race.

6. **Phenylbutazone Levels Permitted and Penalty.** No urine sample taken from a horse shall exceed 165 micrograms of phenylbutazone or its metabolites per milliliter of urine or shall not exceed 5 micrograms per milliliter of blood plasma.

On a first violation period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of \$250.00; at concentrations above 10 ug/ml plasma: a fine of up to \$500.00.

On a second violation within a 12 month period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of \$500.00; at concentrations above 10 ug/ml plasma: a fine of up to \$1,000.00.

On a third or subsequent violation within a 12-month period: a fine of \$1,000.00, a suspension of 30 days, and loss of purse.

7. Administered under Direction of Commission Licensed Veterinarian. Phenylbutazone must be administered under the direction of a commission licensed veterinarian.

8. List Provided. Horses which are on phenylbutazone shall not be indicated on the daily racing programs or any other publications except that a list of horses on phenylbutazone will be kept by the stewards.

9. Lasix Treatment. Any horse which exhibits symptoms of Epistaxis and/or respiratory tract hemorrhage is eligible for placement on the bleeder list and for treatment on race days with the approved medication to prevent or limit bleeding during racing.

10. Bleeders Listing. To be placed on the bleeders list, a horse must be found to have, during or immediately following a race or workout, shed free blood from one or both nostrils or bled internally in the respiratory tract. A Commission licensed veterinarian, following his or her personal examination of a horse, or after consulting with the horses' private veterinarian, shall be allowed to certify a horse as a bleeder. A universal bleeders certificate is required.

11. License Required. In any and all cases, private veterinarians must be licensed with the Utah Horse Racing Commission as a veterinarian in order to administer Lasix.

12. Horse Removed From Bleeders List. A Commission licensed veterinarian may remove a horse from the bleeders list, provided a request is made in writing and it is the recommendation of the veterinarian of the horse, or after an examination by the veterinarian, it is determined that the horse is not a bleeder or is no longer eligible for the bleeders list.

13. Treatment Procedure. Horses on the bleeders list must be treated at least four hours prior to post time with the bleeder medication furosemide, (i.e. Lasix). No other treatment is permitted for bleeder treatment. Bleeder medication must be administered by a Commission licensed veterinarian, using dosages pursuant to CHRB Rule No. 1845, section (e), (Effective 5/27/05), Authorized Bleeder Medication, which is hereby incorporated by reference. The bleeder medication is administered by the trainers veterinarian, and must be witnessed by the trainer or his designee upon their request. Administration of the bleeder medication must be reported in writing on a form designated by the Commission, to the track management no later than two hours prior to the scheduled post time of the last live race of the program.

14. Lasix Levels Permitted and Penalty. Any horse whose post race blood tests contains a level in excess of the levels set forth in CHRB Rule No. 1845, sections (b)-(c), (Effective 5/27/05), Authorized Bleeder Medication, hereby incorporated by reference, will be said to be positive for Lasix overage and in violation of Utah Horse Racing Rules and Regulations.

A. A finding of a chemist of furosemide (Lasix) exceeding the allowable test levels given above shall be considered prima facia evidence that the medication was administered to the horse and carried in the body of the horse while participating in the race.

B. In these cases, a fine and/or suspension will be levied to such horse trainer under the trainer responsibility rule and the horse will be disqualified from the race.

15. Horses Designated. The horses' trainer or designated agent is responsible to enter horses correctly indicating the prescribed medication for the horse. Horses approved for Lasix medication will be designated on the overnight and the daily program with a Lasix or "L". A list of horses approved for and using Lasix medication will be maintained by the stewards.

16. Bleeder Disqualification. Any horse that bleeds a second time in Utah shall not be able to race for a period of 30 days from the date of the second bleeding offense. Any horse that bleeds for a third time shall be suspended from racing for a period of one year from the date of the third offense. Any horse bleeding for the fourth time will be given a lifetime suspension from racing.

17. Disqualification of Owner or Trainer. A horse owner or trainer found to have committed illegal practices under this chapter or found to have administered any non-approved medication substances in violation of the rules in this chapter, shall be deemed disqualified and denied, or shall promptly return, any portion of the purse or sweepstakes or trophy awarded in the affected race, and shall be distributed as in the case of a disqualification. If the affected race is a qualifying race for a subsequent race and if a horse shall be so disqualified, the eligibility of the other horses which ran in the affected race, and which have started in the subsequent race before announcement of such disqualification shall not in any way be affected.

18. Hypodermic Instruments Prohibited. Except by specific written permission of the presiding steward, no person within the grounds of the racing association where the horses are lodged or kept shall have possession of, upon the premises which he occupies or has the right to occupy or in any of his personal property or effects, any hypodermic instrument, hypodermic syringes or hypodermic needle which may be used for injection into any horse of any medication prohibited by this rule. Every racing association is required to use all reasonable efforts to prevent the violation of this rule.

19. Search Provisions. Every racing association, the Commission or the stewards shall have the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the association. Any licensee accepting a license shall be deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith.

20. Daily Medication Reports. All practicing veterinarians must submit daily to the commission veterinarian a medication report form furnished by the Commission containing the following:

- A. Name, age, sex and breed of the horse.
- B. The permitted drug used (Bute or Lasix).
- C. The time administered.
- D. The route of the administration.
- E. The report must be dated and signed by the veterinarian

so administering the medication. Any such report is confidential and its contents shall not be disclosed except in a proceeding before the stewards or the Commission or in the exercise of the Commission's jurisdiction.

21. Prima Facia Evidence. If the stewards find that any non-approved medication, for which the purpose of definition shall include any drug, chemical, narcotic, anesthetic, or analgesic has been administered to a horse in such a manner that it is present in a pre-race or post-race test sample, such presence shall constitute prima facia evidence that the horse has been illegally medicated.

22. Trainer Responsibility. Under all circumstances, the horse of record trainer shall be responsible for the horse he trains.

**KEY: horses, horse racing**  
**February 2, 2016**  
**Notice of Continuation August 30, 2011**

4-38-4

**R65. Agriculture and Food, Marketing and Development.**  
**R65-8. Management of the Junior Livestock Show Appropriation.**

**R65-8-1. Authority.**

A. Promulgated under authority of Subsection 4-2-2(1)(i) for the management of the Junior Livestock Show Appropriation.

B. It is the intent of these rules to regulate the following elements:

1. Establishment of a forum to carry out the intent of these rules
2. Participation in the appropriation
3. Establishment of official show dates and entry deadlines
4. Equitable distribution of the appropriation
5. Maintenance of administrative control of the fund

**R65-8-2. Establishment of a Forum.**

A. There is established a Utah Junior Livestock Show Association to be composed of the President, or the President's representative, of each of the Junior Livestock Shows that are currently participating in the appropriation. The President of each show, or the President's representative, may vote on issues at the annual meeting.

B. The Association will hold an annual meeting to conduct the business associated with carrying out the intent of these rules. The meeting will be held at a time decided upon by the officers.

C. The Association will conduct an election during even numbered years to elect a Vice-President and Secretary. The Vice-President will succeed the President on even numbered years. The Treasurer function will be carried out by the Commissioner's designated liaison to the Association as contained in R65-8-6.

D. The President of each participating show, or the President's representative, will attend the annual meeting or submit a written explanation for non-attendance to the President of the Association.

E. Representatives from at least one-third of the member shows will constitute a quorum for conducting business at the annual meeting.

F. Membership dues will be set by the officers of the Association, but may not exceed \$25.00 per year, payable at the annual meeting. Allocations from the show fund may not be used to pay dues.

**R65-8-3. Participation in the Appropriation.**

A. Junior Livestock Shows which are not currently participating in the appropriation but who would like to participate must submit a request in writing to the President of the Association. This request will be acted on at the next annual meeting.

B. Any resident of the state who is a 4-H or FFA member and who meets the age requirements of the specific show must be allowed to participate in any show receiving funds under the terms of these rules.

**R65-8-4. Establishment of Official Show Dates and Entry Deadlines.**

A. By November 15 of each year, each show will submit, on an official form provided, all entrance requirements, including show dates, entry deadlines, and livestock ownership requirements. These documents will be filed with the Secretary for compilation into an official notice of show dates, entry deadlines and ownership requirements for distribution to the members.

**R65-8-5. Equitable Distribution of Appropriation.**

A. The association will be responsible for developing and maintaining an official formula for distribution of the

appropriation. This formula will be filed with the Treasurer for general review, and will be used to develop the allotment for each show.

**R65-8-6. Maintenance of Administrative Control of the Fund.**

A. The Commissioner will designate a department employee as liaison to the Association. This designee will act as Association Treasurer and will insure, on behalf of the Commissioner, that the fund is being managed according to Legislative intent.

**KEY: exhibitions, livestock  
1992**

**Notice of Continuation February 29, 2016**

**4-2-2(1)(i)**

**R68. Agriculture and Food, Plant Industry.****R68-4. Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products.****R68-4-1. Authority.**

Promulgated under authority of Section 4-2-2 and 4-2-2(1)(h).

**R68-4-2. Standards and Grades.**

The Commissioner of Agriculture and Food has adopted the standards and grades established by the Food Safety and Quality Service, United States Department of Agriculture, for fresh fruits and vegetables. In the case of apricots for processing, no federal standards have been established, therefore, Utah standards have been developed for that commodity. Phytosanitary inspection shall be in accordance with federal standards as well as those of the importing country or state. All other grading of fresh fruit and vegetables in Utah shall be according to official federal grade standards.

**(A) Containers.**

(1) The term "container" is defined as any commercial type of package, open or closed, such as barrel, box, basket, carton, crate, lug, sack, or any other receptacle.

(2) "Clean containers" are defined as those containers which are free from dirt, filth, or product residues and are found acceptable to the Utah Department of Agriculture and Food. Such containers shall be of good substantial construction and be in good condition.

(3) "Closed container" means any container which is covered by any material in the form of a lid, cover, or wrapping of any kind.

**(B) Packaging and Labeling.**

(1) All lots of fresh fruits and vegetables packed for sale, offered for sale, transported for sale or sold in Utah, shall be packaged in clean containers, either open or closed.

(2) All closed containers are to be of good substantial construction, good commercial type and marked to comply in every way with all marketing requirements of the State of Utah, and are in no way to conflict with requirements of the U.S. Food, Drug and Cosmetic Act.

(3) The name and address of the grower, packer, or shipper shall be plainly labeled on all closed containers of fresh fruits and vegetables offered for sale. It shall be unlawful to offer produce for sale in closed containers which are labeled with the brand of another grower, packer or shipper, without permission from such grower, packer, or shipper. Such closed containers shall also be plainly marked on the outside with the name of the product and with terms of either net weight, numerical count, or minimum diameter. Minimum height of numbers and letters for all labeling on packages of ten pounds or more shall be 3/8".

(4) The above labeling requirements shall not apply to fresh fruits and vegetables to be used for processing purposes or for repackaging.

(5) In addition to the above requirements, bags of certified seed potatoes must be officially sealed and tagged with the seal and tag of the certifying agency at point of origin.

**(C) Deceptive Pack.**

(1) It shall be unlawful to offer for sale in Utah a deceptive pack of fruits or vegetables or to mislabel any package of fruits or vegetables packed for sale or offered for sale.

(2) "Deceptive Pack" shall mean any container of fruits or vegetables which has in the outer layer or any exposed surface, fruits or vegetables which are so superior in quality, size or condition to those in the interior of the container, or the unexposed portion, as to noticeably misrepresent the entire contents; provided that facing which is not in violation of the foregoing is not regarded as deceptive. Such pack is deceptive if the outer or exposed surface is composed of products whose size is not an accurate representation of the variation of size of

the products in the entire container.

**(D) Grade Designation.**

All fresh fruits and vegetables offered for sale in Utah in closed or open containers of any kind, or on display tables, or shelves, where a federal or state grade is designated on the container or on a sign accompanying produce on display, must conform to the grade so designated. If a lot of fruit or vegetables does not meet the above requirements, sale of such lot shall be stopped until the lot is brought into compliance.

**R68-4-3. Prohibited Sale.**

It shall be unlawful to sell or offer for sale in Utah any fruits or vegetables in bulk or in containers which contain more than ten percent by count or weight of plant pest injury or serious defects of a progressive nature which has penetrated or damaged the edible portions, including not more than five percent of fruit with worm holes.

**R68-4-4. Authority to Issue Certificates.**

No person, firm, corporation, or association is permitted to issue, classify or sign certificates covering the grade of farm products when such farm products have been officially standardized, except as provided by law and only by a person properly qualified, licensed, and designated as a state agricultural inspector by the Utah Department of Agriculture and Food and approved and licensed by the federal supervisor.

**R68-4-5. Duty of Inspector.**

When an agricultural inspector finds any lot of fruits or vegetables being offered for sale which fails to meet the requirements of the regulations herein, it shall be his duty to serve notice on the owner or person who has possession thereof, that the provisions of these regulations have been violated and that the produce in question cannot be marketed or sold unless officially released by said inspector.

**R68-4-6. Inspection Notes and Certificates.**

(A) Only financially-interested persons are entitled to information from the inspectors' notes unless applicant directs the inspector to give this information to prospective buyers. This information can be obtained by others only by court order through subpoena.

(B) All certificates issued by authorized agents of the U.S. Department of Agriculture (Federal-State Inspection Service) shall be received in all federal courts as prima facie evidence of the truth contained therein.

**(C) General quantitative terms.**

(1) Averages cannot always be accurately obtained. In such cases the following general terms may be used with the meanings given.

(a) Few means 10 percent or less.

(b) Some means 11 to 25 percent.

(c) Many means 26 to 45 percent.

(d) Approx. half means 46 to 54 percent.

(e) Most-Mostly means 55 to 89 percent.

(f) Generally means 90 percent or more (see paragraph 447).

(g) Practically all means 95 percent or more.

(h) Occasionally means 5 percent or less (Used only in reference to container; see Paragraph 446).

**R68-4-7. Utah Standards for Apricots for Canning or Freezing (There are no Federal Standards for processing apricots).**

(A) Utah No. 1 shall consist of apricots which are well formed, firm ripe, (but not hard or overripe), well colored, free from decay, mold, worms and worm holes and from damage caused by dirt, growth crack, limb rubs, sun cracks, scald, hail, bird pecks, scale, disease, insects, mechanical factors, or by

other means (See minimum size).

(B) Utah No. 2 shall consist of apricots which are ripe (but not overripe and soft, or hard or shriveled), fairly well colored, not badly misshapen, free from decay, mold, worms, worm holes and from serious damage by any cause.

(C) Culls shall mean apricots which do not meet the requirements of Utah No. 2 or are affected by blight, scale, scale insects, larvae, or other worm damage, serious bruises and decay.

(D) Minimum size refers to the greatest diameter, measured through the center of the apricot at right angles to a line running from the stem to the blossom ends. Minimum sizes for Utah No. 1 and Utah No. 2 grades may be fixed by agreement between buyer and seller.

(E) Definitions of terms used in these grades:

(1) "Ripe" shall mean the state of maturity wherein the apricots are ready for immediate processing or consumption.

(2) "Firm" shall mean that the apricots are fairly solid and yield slightly to moderate pressure.

(3) "Well colored" shall mean that the apricots show at least 90 percent good over-all deep yellow or orange color characteristic of ripe fruit.

(4) "Fairly well colored" shall mean that the apricots show at least two-thirds of the over-all surface with a good shade of orange or deep yellow color characteristic of ripening apricots.

(5) "Well formed" shall mean the shape characteristic of the variety and shall not be extremely flat or otherwise misshapen.

(6) "Damage" shall mean any injuries or defects which materially affect the appearance or the processing quality of the apricots or cause waste of more than five percent (by weight) of the flesh in excess of that which occurs if the apricots were not defective, or cause waste to the extent that the fruit, after trimming, will not yield two reasonably well shaped halves.

(7) "Serious damage" shall mean any injuries or defects which seriously affect the appearance or processing quality or cause a waste of more than ten percent (by weight) of the flesh in excess of that which would occur if the apricots were not defective.

(F) Tolerances.

(1) It is contemplated, in the application of above given standards, that in most instances sellers will not sort their apricots into separate lots of Utah No. 1 and Utah No. 2 grades before delivery to the buyer, and that the buyer will pay on the basis of the percentage of each grade in the sellers' lot as described by inspection. In such cases, no tolerance is needed. Should the contract between buyer and seller call for delivery of lots containing only Utah No. 1 and Utah No. 2, then, unless otherwise specified, a ten percent tolerance shall be allowed for apricots which fail to meet requirements of the grade on which the contract is based, with an additional ten percent tolerance allowed for apricots which fail to meet the minimum size specified in the contract. Lots of apricots which contain in excess of five percent wormy fruit must be reconditioned by the grower to be acceptable for processing purposes.

#### **R68-4-8. Certification and Grade Standards for Seed Potatoes.**

(A) Requirements and standards for the certification and grading of seed potatoes are established and regulated by the Utah Crop Improvement Association, Utah Agricultural Experiment Station, Logan, Utah, 84322-4820.

(B) Copies of seed certification requirements and standards can be obtained from the Utah Crop Improvement Association, Logan, Utah.

#### **R68-4-9. Controlled Atmosphere (CA) Apples.**

(A) Licensing.

(1) Any person, corporation, partnership, association or

other organized group or person who owns or operates a controlled atmosphere room or storage building shall apply for a license with the Commissioner of Agriculture and Food on a form prescribed by the Commissioner. The licensing period shall commence on January 1 and end on December 31 of each year.

(2) The application for an annual registration to engage in the business of operating a controlled atmosphere storage warehouse or warehouses shall be accompanied by an annual license fee determined by the department pursuant to Subsection 4-2-2(2).

(3) The Commissioner shall assign each approved applicant a registration number preceded by the letters CA. This number shall be marked on all containers coming under the provisions of these regulations.

(B) Atmospheric Specifications.

(1) Apples shall not be identified as being from CA storage unless the following requirements have been met as evidenced by inspection and certification by the Commissioner of Agriculture and Food.

(a) The percent of oxygen within the storage atmosphere shall be reduced to five percent within 20 days after the date of sealing.

(b) The period of storage in a sealed room with not more than five percent oxygen shall be a minimum of 45 days for Gala and Jonagold varieties and a minimum period of 90 days for all other varieties. The maximum period of storage in a sealed room with not more than five percent oxygen shall be ten months, but in no case later than September 1 of the year following harvest.

(c) The fruit temperature in the CA storage room shall be maintained without significant deviation in a range of temperature normal for the variety.

(d) A representative of the Utah Department of Agriculture and Food shall be notified prior to opening of the CA facility following the storage period, and he shall inspect the general condition of the facility and contents within 48 hours following the opening.

(e) CA Certified Apples must enter commercial channels of trade within four weeks after storage is opened. Minimum condition and maturity standards shall be the U.S. Condition Standards for Export.

(C) Storage Records.

(1) Each owner or operator shall maintain a record for each room on an approved form or forms. The record shall include owner or operator's name and address, room number, date of sealing, date of opening, capacity in bushels, lot identification, number of bushels within each lot, and daily air constituents determination including date of test, time of test, percentage of oxygen, percentage of carbon dioxide, temperature and comments.

(2) Each owner or operator shall submit to the Utah Department of Agriculture and Food within 20 days after date of sealing, a report in writing, for each room showing room number, date of sealing and number of bushels contained therein.

(D) Marketing CA Apples.

(1) Any person selling, offering for sale or transporting for sale any apples coming under the provision of these regulations shall furnish an invoice covering the sale of such apples. Each invoice shall indicate the CA registration number assigned to the owner or owners of the controlled atmosphere room or storage building in which each lot or lots of apples included thereon were kept. Enforcement officials may investigate and examine records and invoices relating to any transactions in connection herewith in order to determine the identity of apples represented as meeting requirements for such identification.

(2) It shall be unlawful for any person to sell, hold for sale, or transport for sale any apples represented as having been

exposed to "controlled atmosphere storage" or to use any such term or form of words or symbols of similar import unless such apples have been stored in controlled atmosphere storage which meets the requirements of the regulations adopted herein.

**R68-4-10. Standards for Utah Premium Grade for Apples.**

(1) Utah Premium apples shall consist of Utah grown apples which meet or exceed all minimum standards as issued by the "United States Department of Agriculture (USDA) U.S. Extra Fancy Grade", including the requirements and tolerances as defined in the "United States Standards for Grades of Apples effective September 1, 1964, as amended and in effect July 25, 1972, as issued by USDA". Each apple of this grade shall have the amount of color specified in the USDA Standards for US Extra Fancy given for a specific variety except solid red apples shall have a minimum 85 percent good red color.

(2) The Utah Department of Agriculture and Food shall conduct condition and grade inspections to assure the grade and quality of all Utah Premium Apples. Fees for quality assurance inspections will be pursuant to Subsection 4-2-2(2).

**R68-4-11. Phytosanitary Inspection.**

A Phytosanitary Inspection must be performed by the Commissioner of Agriculture and Food or designated employees of the Department, on plants or plant products and may include: nursery plants or bulbs, seeds, grains, fruits, vegetables, and other plant materials for the purpose of export or sale within the state.

(A) Definitions.

(1) Phytosanitary shall mean sanitary plant health inspection.

(2) Standards shall mean the requirements of the federal government, and those of the importing counties of this state or of another state.

(3) Information shall mean the information contained on the phytosanitary certificate that represents the plant material listed.

(B) Shipping Information such as names and descriptions of plant materials, origin of plant material, intended destination, means of transportation, intended date for shipment and name and address of consignee must be provided by the exporting shipper to the Department when calling for an issuance of a certificate.

**R68-4-12. Charges for Inspection Services.**

(A) Inspection fees will be determined pursuant to Subsection 4-2-2(2). Such fees shall be paid by the person, firm, corporation or other organization who requested inspection, upon receipt of a statement for same from the Utah Department of Agriculture and Food. In all cases, payment of such charges shall be made to the Utah Department of Agriculture and Food within thirty days of the date of billing. If accounts become delinquent, the Department may discontinue inspection services until full payment is received.

(B) Mileage or extra expense incurred in cases where inspection is requested at isolated loading points may be added to the cost of the regular inspection fee. Such charges shall be the same as those set forth in the current State of Utah Travel Rules and Regulations.

(C) Charges in addition to regular inspection fees shall be made for inspection services performed during irregular working hours when such hours are not included in the inspectors' scheduled shift.

**KEY: food inspection**

**April 1, 1997**

**Notice of Continuation February 8, 2016**

**4-2-2**

**R68. Agriculture and Food, Plant Industry.****R68-7. Utah Pesticide Control Rule.****R68-7-1. Authority.**

Promulgated under authority of Section 4-14-6.

**R68-7-2. Registration of Products.**

All pesticide products distributed in Utah shall be officially registered annually with the Utah Department of Agriculture and Food.

(1) Application for registration shall be made to the Department on forms prescribed and provided by them and shall include the following information:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(b) The name of the pesticide.

(c) A complete copy of the label which will appear on the pesticide.

(2) The Department may require submission of the complete formula of any pesticide if it is deemed necessary for administration of the Utah Pesticide Control Act. If it appears to the Department that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the act, the product shall be registered.

(3) The registrant is responsible for the accuracy and completeness of all information submitted concerning application for registration of a pesticide.

(4) Once a pesticide is registered under the Act, no further registration is required: Provided that,

(a) the product remains in the manufacturer's or registrant's original container; and

(b) the claims made for it, the directions for its use, and other labeling information do not differ in substance from the representations made in connection with the registration.

(5) Whenever the name of a pesticide product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective.

(6) Whenever a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the U.S. Environmental Protection Agency (EPA), the Utah Department of Agriculture and Food requires said product to be registered for two years from date of the notice of discontinuation. When a product is found in commercial trade after the discontinuation period, the Department will require that the registrant register said product as outlined in Chapter 14, Utah Pesticide Control Act, 4-14-3(1).

(7) The Department may exempt any pesticide that is determined either (1) to be adequately regulated by another federal agency, or (2) be of a character which is unnecessary to subject to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

(8) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall comply with Section 4-14-3 of the Utah Pesticide Control Act.

(9) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-5 of the Utah Pesticide Control Act.

(10) A registration fee determined by the Department, pursuant to Subsection 4-2-2(2), shall be paid annually for each product, regardless of the number of products registered per applicant.

(11) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the Department, pursuant to Subsection 4-2-2(2). It shall be paid on or before June 30 of each year. If the renewal of a pesticide

registration is not received prior to July 1 of that year, an additional fee determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

**R68-7-3. Product Labeling.**

(A) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-4.

(B) All pesticide labels shall contain statements, words, graphic material, and any other information required by the EPA.

**R68-7-4. Classification of Pesticides.**

The commissioner shall classify all pesticide products registered in Utah for "restricted-use" or "general-use" according to standards consistent with Section 3 of FIFRA. The commissioner shall consider all pesticides and uses classified as restricted by the EPA to be restricted in the State of Utah. The Commissioner may also restrict the use of additional pesticides if it is found that the characteristics of such pesticides require that their uses be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy. Individuals not appropriately certified are prohibited from using restricted-use pesticides, with the exception of those competent individuals working under the direct supervision of a certified private applicator.

**R68-7-5. Classification of Pesticide Applicators.**

Pesticide applicators shall be classified as commercial, non-commercial, or private applicators according to the following criteria:

(1) Commercial Applicator - any person who uses any pesticide for hire or compensation.

(2) Non-commercial Applicator - any person working as an individual or an employee of a firm, entity or government agency who uses or demonstrates the use of any restricted-use pesticide and who does not qualify as a private applicator, nor require a commercial applicator's license.

(3) Private Applicator - any person or his/her employer who uses or supervises the use of any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by the employer or (if applied without compensation other than trading of services between producers of agricultural commodities) on the property of another person.

**R68-7-6. Categorization of Pesticide Applicators.**

Commercial and Non-commercial applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.

(1) Agricultural Pest Control.

(a) Plant. This category includes applicators using pesticides to control pests in the production of agricultural crops including, but not limited to, field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.

(b) Animal. This category includes applicators using pesticides on animals including, but not limited to, beef and dairy cattle, swine, sheep, horses, goats, poultry, and to places on or in which animals inhabit. Doctors of veterinary medicine or their employees engaged in the business of applying pesticides for hire, publicly representing themselves as pesticide applicators or engaged in large-scale use of pesticides, are included in this category.

(2) Forest Pest Control. This category includes applicators using pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and Turf Pest Control. This category includes applicators using pesticides to control ornamental and



turf pests in the maintenance and production of ornamental trees, shrubs, flowers and turf. This includes controlling pests on sidewalks, driveways, and other similar locations.

(4) Seed Treatment. This category includes applicators using pesticides on seeds.

(5) Aquatic Pest Control.

(a) Surface Water: This category includes applicators applying pesticides to standing or running water, excluding applicators engaged in public health-related activities included in R68-7-6(8).

(b) Sewer Root Control: This category includes applicators using pesticides to control roots in sewers or in related systems.

(6) Right-of-Way Pest Control. This category includes applicators using pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(7) Structural and Health-related Pest Control. This category excludes any fumigation pesticide application and is limited to applicators using pesticides in, on, or around food handling establishments; human dwellings; institutions, such as schools and hospitals; industrial establishments, including warehouses, storage units and any other structures and immediately adjacent areas, public or private; to control household pests, fabric pests, and stored-product pests and to protect stored, processed and manufactured products. This category includes vertebrate pest control in and immediately adjacent to buildings. "Immediately adjacent to a structure" means not further than three (3) feet from the structure. If the labeling for the structural pesticide permits structural use on structural pests and calls for application beyond three feet the application can be made, but cannot exceed the maximum distance prescribed by the label.

(8) Public Health Pest Control. This category includes applicators applying the use of pesticides for the management and control of pests having medical and public-health importance.

(9) Regulatory Pest Control.

(a) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a mechanical ejection device, or other methods to control regulated pests.

(b) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a protective collar, or other methods to control regulated pests.

(10) Demonstration, Consultation and Research Pest Control. This category includes individuals who demonstrate or provide instruction to the public in the proper use, techniques, benefits and methods of applying restricted-use pesticides. This category includes, but is not limited to agricultural compliance specialists, extension personnel, commercial representatives, consultants and advisors, and persons conducting field research with restricted-use pesticides. In addition, they shall meet the specific standards that may be applicable to their particular activity.

(11) Aerial Application Pest Control. This category includes applicators applying pesticides by aircraft. Aerial applicators are required to be certified in the Aerial-Application Pest-Control Category and any other categories of intended application.

(12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides in the control of vertebrate pests outdoors, such as rodents, birds, bats, predators or domestic animals.

(13) Fumigation/Stored-Commodities Pest Control. This category includes applicators using fumigants to control pests in, on, or around soils, structures, railroad cars, stored grains, manufactured products, grain elevators, flour mills, and similar areas and items.

(14) Wood-Preservation Pest Control. This category includes applicators who apply wood-preservative pesticides to wood products, such as fence posts, electrical poles, railroad ties, or any other form of wood products.

(15) Wood-Destroying Organisms Pest Control. This category includes applicators using pesticides to control termites, carpenter ants, wood-boring or tunneling insects, bees, wasps, wood-decaying fungi and any other pests destroying wood products.

#### **R68-7-7. Standards of Competence for Certification of Applicators.**

Applicators must be at least 16 years of age and demonstrate competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification. Standards for certification of applicators as classified in R68-7-8 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.

(1) Commercial and Non-Commercial Applicators.

Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.

(a) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:

(i) Persons conducting laboratory-type research involving pesticides; and

(ii) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.

(2) Aerial Application. Additional Standards.

Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.

(3) Private Applicators. Private applicators shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted-use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.

(4) Supervision of Non-Certified Applicators by Certified Private Applicators.

(a) A certified private applicator that functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his/her instruction and control.

(b) A certified private applicator shall provide written or oral instruction for the application of a restricted-use pesticide applied by a non-certified applicator under his/her supervision when the certified applicator is not required to be physically present. If an applicator cannot read, instructions shall be given in a language understood by the applicator. The instructions shall include procedures for contacting the certified applicator in the event he/she is needed.

(5) The certified applicator shall be physically present to supervise the application of a restricted-use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

#### **R68-7-8. Certification Procedures.**

##### **(A) Commercial Applicators.**

(1) License Required. No person shall apply, advertise for, solicit, or hold oneself out as willing to engage in the business of applying any pesticide for hire or compensation to the lands of another at any time without becoming certified and obtaining a commercial applicator's license and a pesticide business license as described in 4-14-13 issued by the department, or working for a company which has already attained such business license.

(2) The pesticide applicator business license fee will be determined by the number of commercial pesticide applicators employed by the business. The fee ranges are 1-4 commercial pesticide applicators, 5-9 commercial pesticide applicators and 10 or more commercial pesticide applicators.

(a) Application for such licenses shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying pesticides for hire or compensation must be licensed as a commercial applicator. An applicator and business license fee determined by the Department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification.

(b) A commercial pesticide applicator operating under more than one business identity or name from a single business location shall be licensed separately for each business identity or name.

(c) A commercial pesticide applicator with a single business identity or name but operating from more than one business location shall be licensed at each separate business location.

(d) If the name selected by an applicant for a license to act, operate, or do business or advertise as a commercial or noncommercial applicator in the State of Utah is the same or so near the same as that of another licensee already doing business in the state as to cause confusion in the minds of the people or is likely to deceive the public, the Department may require the applicant to apply for a license under a different name that is distinguishable from the names of existing licensees. Any determination made pursuant to this rule shall be at the sole discretion of the Department.

(e) Each business location licensed shall have a minimum of one certified applicator at that location who is certified in each licensed category for which applications are made.

(f) A franchised business shall have a separate license and a separate certified applicator at each business location.

(3) Written Examination. An applicant for a commercial pesticide license shall demonstrate competency and knowledge of pesticide applications by passing the appropriate written examinations. Examination and educational-material fees determined by the Department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. Any person applying to become certified or recertified must

demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All applicants for a commercial applicator license must pass the general examination and the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 or above is required to pass any written examination. A score of less than 70 on the general standards or category examinations shall result in denial of certification of that test. A person must pass the general and at least one category examination before becoming certified. An applicant scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he/she will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again; the original certification fee and any retesting fees will not be refunded.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classifications applied for and for which the prescribed fee(s) have been paid, the Department shall issue a commercial applicator's license. The license shall expire December 31 of the third calendar year unless it has been revoked or suspended by the commissioner for cause, which may include any of the unlawful acts given in R68-7-14. If an application for a commercial license is denied the applicant shall be informed of the reason. The applicator is required to have their license in their immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. A pesticide applicator business license shall be required for each pesticide business location with applicators working in the state.

(5) Any new applicator or applicator business license licensing after November 1 will be licensed for the remainder of that year and the following three calendar years.

##### **(6) License Recertification.**

(a) Each license shall expire on December 31 of the third calendar year of its issuance. Commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or meet any other requirements specified by the commissioner shall be added to this rule as often as necessary.

##### **(b) Recertification options:**

(i) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(ii) Attend approved recertification courses and pass the required category examinations with a score of 70% or above or;

(iii) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of

certification.

(7) Records Maintained. Commercial applicators shall keep and maintain records of each pesticide application. These records must be recorded within 24 hours after the pesticide application is made. These application records must include the following information:

- (a) Name and address of property owner;
- (b) Location of treatment site, if different from (a);
- (c) The month, day and year when the pesticide was applied;
- (d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide product as sold by the manufacturer) applied per unit area and total amount of diluted pesticide used;
- (e) Purpose of application (target site and pest to be treated);
- (f) The name, business address and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the commercial applicator.

(8) Exemption.

The provisions of this section relating to pesticide licenses and requirements for their issuance do not apply to private pesticide applicators using pesticides in the production of any agricultural commodity and applying pesticides for his/her neighbors provided he/she operates and maintains pesticide application equipment for his/her own use, is not engaged in the business of applying pesticides for hire or compensation in any form other than trading of services between producers of agricultural commodities, does not publicly represent himself/herself as a pesticide applicator, and operates his/her pesticide application equipment only in the vicinity of his/her owned or rented property; provided, however, that when he/she applies a restricted-use pesticide, he/she shall comply with the certification requirements specified herein.

(B) Non-Commercial Applicators.

(1) License Required. No non-commercial applicator shall use or demonstrate the use of any restricted-use pesticide without becoming certified and obtaining a non-commercial applicator's license issued by the Department. Application for such license shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying restricted-use pesticides must be licensed.

(2) Written Examination. An applicant for a non-commercial pesticide license shall demonstrate to the Department competency and knowledge of pesticides and their applications by passing the appropriate written examinations. Examination and educational-material fees determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed at the time an individual takes the general and category tests. All applicants for a non-commercial applicator license must successfully pass a general examination based upon standards applicable to all categories. After passing the general examination, applicants must pass the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 percent or above is required for passing any written examination. A score of less than 70 percent on the general or category examinations shall result in denial of certification in that category. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65 percent on any examination must wait three days before retesting on that examination. A person scoring from 65% to

69% may retake the test again the same day, schedule permitting. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he or she will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again. The original certification fee and any retesting fees will not be refunded.

(3) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classification(s) applied for, the Department shall issue a non-commercial applicator's license limited to such activities and classifications applied for. The applicator is required to have his/her license in his/her immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee as determined by the Department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. The license shall expire December 31, three calendar years after the issuance of the certification, unless it has been suspended or revoked by the commissioner for cause, which may include any of the unlawful acts given in R68-7-14. If an application for a non-commercial license is denied the applicant shall be informed of the reason.

(4) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(5) License Recertification. Non-commercial applicators must recertify every three years, and be subject to re-examination at any time. Information may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or any other requirements specified by the commissioner shall be added to this rule as often as necessary.

Recertification options are:

- (a) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;
- (b) Attend approved recertification courses and pass the required category test(s) with a score of 70% or above or;
- (c) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(6) Records Maintained. Non-commercial applicators shall keep and maintain records of each application of any restricted-use pesticide. These application records must be recorded within 24 hours after the pesticide application is made. These records must include the following information:

- (a) Name and address of property owner;
- (b) Location of treatment site, if different from (a);
- (c) The month, day and year when the pesticide was applied;
- (d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide concentrate product as sold by the manufacturer) applied per unit area, and total amount of diluted pesticide used;
- (e) Purpose of application (target site and pest to be

treated);

(f) The name, address, and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the non-commercial applicator.

(7) Exemption. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides as drugs or medication during the course of their normal practice. Non-Commercial applicators engaged in public-health related activities are exempt from recording the name and address of property owners, but are required to document a detailed description of treatment areas by using such means as GPS coordinates or other locality descriptions for record keeping purposes.

(C) Private Applicators.

(1) License Required. No private applicator shall purchase, use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the Department. Issuance of such license shall be conditioned upon the applicator's complying with the certification requirements determined by the Department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons. Application for a license shall be made in writing on a designated form obtained from the Department.

(2) Certification Methods. Any person applying to become licensed must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All first-time Private Applicators must successfully pass a written test. A score of 70 percent or above is required for passing any written test. A score of less than 70 percent will result in the denial of certification. An applicator scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(3) Emergency-Use Permit. A single restricted-use pesticide may be purchased and used by a non-certified person on a one-time-only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant shall participate in a discussion concerning safe use of the specific product with a representative of the Utah Department of Agriculture and Food. Following an adequate discussion of same, the Department of Agriculture and Food may issue the applicant a permit to purchase and use the product on a specific site on a one-time-only basis. The applicant shall be required to become certified before being authorized to further purchase and use restricted-use pesticides.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides, the applicant shall be issued a private applicator's license. Examination and educational-material fees determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. The license issued by the commissioner shall expire on December 31, three calendar years after issuance, unless the license has been revoked or suspended by the commissioner. If an application for a private license is denied, the applicant shall be informed of the reason. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued.

(5) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following

calendar year.

(6) License Renewal, Recertification. A person applying to recertify must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All certified private applicators must recertify every three years, or more frequently if determined necessary by the Department, by satisfying any of the following procedures or any other requirements specified by the Department.

(a) Completion of a recertification course approved by the Utah Department of Agriculture and Food and passing a written test with a score of 70% or above or;

(b) Complete the original certification process of taking the required written test(s). A score of 70 percent or above is required to pass or;

(c) Accumulate six credits of approved continuing education during the valid three years of certification.

(d) Records Maintained. Private applicators must keep and maintain records according to United States Department of Agriculture (USDA) requirements.

(D) Employees of Federal Agencies. Federal Government Employees wishing to be certified in Utah shall be required to qualify as non-commercial applicators by passing the appropriate examinations, unless such requirement is waived upon presentation of adequate evidence of certification in the appropriate categories from another state with comparable certification requirements. In the event a federal agency develops an applicator certification plan which meets the Utah certification standards, employees of that agency who become certified under that plan may qualify for certification in the State of Utah.

(E) Certification of Out-of-State Applicants.

When a pesticide applicator is certified under an approved state plan of another state and desires to apply pesticides in Utah, he/she shall make application to the Department and shall include, along with the proper fee and any other details required by the Act or these rules, a true copy of his/her credentials as proof of certification in the person's state of residence and a letter from that state's department of agriculture stating that he/she has not been convicted of a violation of any pesticide law and is currently licensed as a pesticide applicator in that state. The Department may upon review of the credentials, issue a Utah certification to the applicator in accordance with the use situations for which the applicator is certified in another state without requiring determination of competency; provided that the state having certified the applicator will similarly certify holders of Utah licenses or certificates and has entered into a reciprocal agreement with the State of Utah. Out-of-state pesticide applicators who operate in Utah will be subject to all Utah laws and rules.

(F) Change of Licensee Information

(1) Every certified commercial, non-commercial, and private applicator shall notify the Department of any change in, but not limited to applicator's name, address, and phone number and/or change of employer within 30 calendar days of the change.

(2) Every commercial pesticide business licensee shall notify the Department of any changes in, including but not limited to, ownership, company name, owner or manager's name company address, and phone number within 30 calendar days of the change.

(a) Business licenses are nontransferable, and in case of a change in business ownership, a new application and fee are required.

**R68-7-9. Dealer Licensing.**

(A) In order to facilitate rules of the distribution and sale of restricted-use pesticides, it is necessary to license dealers who

dispense such materials.

(1) License Required.

It shall be unlawful for any person to act in the capacity of a restricted-use pesticide dealer, or advertise as, or presume to act as such a dealer at any time without first having obtained a license from the Department. A license shall be required for each location or outlet located within this state from which such pesticides are distributed; provided, that any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into Utah shall obtain a pesticide dealer's license for his/her principal out-of-state location or outlet; provided further, that any manufacturer, registrant or distributor who sells only through or to a pesticide dealer is not required to obtain a pesticide dealer's license.

(2) License Issuance. Application for a pesticide dealer's license shall be on a form prescribed by the Department and shall be accompanied by a license fee determined by the Department pursuant to subsection 4-2-2(2). If the Department finds the applicant qualified to sell or distribute restricted-use pesticides and the applicant has paid the prescribed license fee, the Department shall issue a restricted-use pesticides dealer's license. This license shall expire December 31 of the third calendar year, unless it has been previously revoked or suspended by the commissioner for causes which may include any of the unlawful acts included in R68-7-14.

(3) License Renewal. License-renewal fees are payable triennially before January 1. If the renewal of a pesticide dealer's license is not received prior to January 1 of the renewal year, an additional fee determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license renewal shall be issued.

(4) Records Maintained. Each dealer outlet licensed to sell restricted-use pesticides is required by the Department to maintain a restricted-use pesticide sales register by entering all restricted-use pesticide sales into the register at the time of sale. The restricted-use pesticide sales register must be available in an electronic format approved by the Department. The electronic register form, shall include the following information:

- (a) The Corporate or Company Name.
- (b) The name of the branch store that made the sale.
- (c) The store's complete Restricted-Use Pesticide dealer license number, including the prefix.
- (d) The complete sale date including the month, day and year.
- (e) The first and last name of the salesperson that made the sale.
- (f) The first and last name of the buyer.
- (g) The buyer's complete Pesticide Applicator License number, including the prefix.
- (h) If the buyer was authorized by letter, the authorization letter must be kept on file.
- (i) If the buyer used a temporary permit, a copy of the permit must be kept on file.
- (j) The buyer's complete street address, city, state and zip code.
- (k) The brand name of the product sold, its EPA Registration Number and the quantity sold.

(l) The product container size and its unit of measure (i.e. gallons, liters, etc.). Such records shall be kept for a period of two years from the date of restricted-use pesticide sale and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee, upon request, shall be furnished a copy of such records by the restricted-use pesticide dealer.

(5) Submission of Electronic records. On July 1 of each year, Dealers are required to submit their Restricted-Use Pesticide sales records for the period starting the previous July

1 through June 30 of the current year. The due date for submission is July 31 of the current year.

(6) Exemption. Provisions of this section shall not apply to: (a) a licensed pesticide applicator who sells restricted-use pesticides only as an integral part of his/her pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application (b) Federal, state, county, or municipal agency which provides restricted-use pesticides only for its own programs shall be exempt from the license fee but must meet all other requirements of a pesticide dealer.

(7) Responsible for Acts of Employees. Each pesticide dealer shall be responsible for the acts of each person employed by him/her in the solicitation and sale of restricted-use pesticides and all claims and recommendations for use of restricted-use pesticides. A dealer's license shall be subject to denial, suspension or revocation for any violation of the Pesticide Control Act or rules promulgated thereunder, whether committed by the dealer or by the dealer's officer, agent, or employee.

**R68-7-10. Responsibilities of Business and Applicator.**

(A) Business Licensee Duties and Responsibilities

(1) A business licensee shall ensure that a qualifying party (licensed applicator) of the business licensee receives the training that the applicator requires to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.

(B) Responsibility for business and employee(s)

(1) A business licensee, qualifying party and/or applicator may be held responsible for the acts or omissions of another person who is employed by the business licensee. It is the business' responsibility to properly train, equip, and prepare the other person(s) and maintain records of proper training and equipping.

(2) Failure to fully respond to requests by the commissioners designated agent, in a stated time, for information relating to training and equipping will be evidence for a failure to properly train or equip. The supervising licensee has the burden of proof by a preponderance of the evidence that the business licensee, qualifying party or applicator has fulfilled the required duties as prescribed by this chapter, rules adopted pursuant to this chapter or a written order of the commissioner.

(C) Use of business name and license number.

(1) A business licensee must prominently display the license issued by the Department at the primary business office and each branch office.

(2) A business licensee shall prominently display the business name and license number, as recorded on the license issued by the Department, on:

(a) Customer proposals or contracts for pest management services;

(b) Service records and service notifications;

(c) Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number is displayed on a service vehicle or trailer used in providing pest management services conforms to the following:

(i) Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the Department issues the license or issues a business license change or after the service vehicle or trailer is acquired, whichever is sooner.

(ii) Is in a color that contrasts with the color of the service vehicle and trailer;

(iii) Is prominently displayed on both sides of the service vehicle or trailer;

(iv) Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters

for other words in the business name; and

- (v) Uses at least two-inch numbers for the license number.
- (vi) Letters and numbers must be weatherproof.

(3) A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (2)(c). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (2)(c).

(4) When complying with subsection (2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

(D) Customer Notification.

(1) Prior to the time of each application of a restricted-use pesticide with a Danger/Danger-Poison signal word, the licensed commercial applicator or an employee of the licensed pesticide business shall provide the customer with a written statement containing the following information:

- (a) Business name and telephone number of the licensed business.
- (b) Name and license number of the licensed applicator who made the application
- (c) Date and time of application.
- (d) Type of pesticide application service and brand name of pesticide(s) applied.
- (e) Instructions to the customer to contact the business telephone number if more specific information is desired regarding the pesticide product applied.

(2) The written statement required in subsection (1) shall be provided to the customer by any of the following means:

- (a) Leave at the residence.
- (b) In the case of a multiunit residence leave with the property manager or his/her authorized representative, or
- (c) Mail to the property manager or his/her authorized representative if management is located at a location other than the pesticide application site, within seven (7) calendar days prior to the date of the pesticide application.

**R68-7-11. Termiticide Record Keeping. Additional Standards.**

(A) In addition to the recordkeeping requirements contained in R68-7-8, the applicator will keep as records a diagram/graph of the structure treated that includes dimensions of the structure, including depth to footer.

(B) For post construction treatments the diagram/graph will also illustrate the area(s) where termites and/or termite activity was found.

(C) All records of applications for every individual structure must be kept together.

**R68-7-12. Minimum Standards for Fumigant Applications.**

(A) Application of fumigant products require strict adherence to the label and when required by the label, a verified and written Fumigation Management Plan (FMP) must be prepared in advance of treatment. A FMP must detail the information prescribed by the label. State standards for fumigation treatments of any space that can be occupied by a person, or non-target species, require the following:

(1) Persons present at the time of releasing the fumigant and during the initial ventilation.

(a) There shall be at least two persons, one of whom must be a certified applicator in the fumigation category, present at the time of the releasing of the fumigant and during the initial ventilation. During the interim, the premises shall be adequately

safeguarded against entry by any person(s).

(2) Notification of local fire department and/or first responders.

(a) Prior to fumigation of any building or enclosed space, other than a fumigating vault, the certified applicator shall notify and provide the local fire department with the address of the fumigation job, time of gas release, kind of gas to be used, and beginning time of the aeration of the premises.

(3) Premises sealed.

(a) Premises to be fumigated shall be sealed in a manner that confines the fumigant to the space intended to be fumigated.

(4) Inspection of premises prior to releasing fumigant

(a) Immediately before releasing the fumigant, the fumigator shall conduct a thorough inspection of the premises to verify that no person(s) or non-target animals remain, and that effective precautions have been taken to safeguard occupants of neighboring buildings as set forth below.

(5) Fumigation of apartments within a multiple unit apartment building.

(a) Fumigation of apartments within a multiple unit apartment building may be fumigated only after proper sealing of the area being fumigated and after all apartments are vacated.

(b) All the adjacent units shall be properly ventilated during the entire exposure period.

(6) Notification of all dwellings or places of business within 100 feet of building being fumigated.

(a) All dwellings or places of business within 100 feet of the building being fumigated must be notified in writing in advance of the fumigation.

(b) All premises within 10 feet must be vacated during the fumigation and aeration periods.

(7) Warning signs.

(a) Warning signs shall be posted conspicuously at all entrances of the premise to be fumigated and at the entrances of all adjacent multiple units and structures within 10 feet and kept there during the entire fumigation and ventilation period. Signs shall be a minimum size of 8 1/2 inches by 11 inches and color to be conspicuous and bearing the word "poison" and display the skull and cross-bones, the name of the fumigant used, and the name, address and telephone number of the fumigator.

(b) Before the fumigant is released, all entrances leading directly to the fumigated space shall be closed, sealed, and locked except exits to be used by fumigating crew. These exits shall be closed, sealed, and locked promptly after the fumigant has been released.

(8) Masks worn.

(a) All members of the fumigating crew must be equipped with a serviceable mask of a type approved by the U.S. Mines, Safety, and Health Administration with correct canister for the type of gas used.

(b) Masks shall be worn while in the enclosed space during and after release of the gas, and until initial ventilation is completed.

(9) Re-entering fumigated premises

(a) No one other than the fumigator shall be permitted to re-enter the fumigated premises until the fumigator has ascertained by personal inspection, with gas mask and with a chemical appropriate test, that the premises are safe for occupancy.

(b) Aeration must be conducted according to the product labeling and re-entry allowed according to levels specified on the label.

(10) Exceptions

(a) The subparts 1 through 9 may not apply to fumigants used to control insects or other pests outside of buildings, or for spot fumigations, or restrictive treatments inside a building, such as grain bins.

(i) Strict adherence to the label instructions must be

adhered to during these applications.

(ii) During the ventilation period of a spot or restrictive fumigation, the premises shall not be occupied by anyone except the fumigator.

(iii) A warning gas is recommended where the fumigant is comparatively odorless.

(B) Fumigation of Burrowing Rodents require strict adherence to the label as well as a Fumigation Management Plan (FMP) that must contain the following information.

(1) Purpose of the application, indicate the exact pest to be controlled and the type of burrow system to be treated.

(2) Pesticide used. State the name of the pesticide, the EPA registration number, and dosage used.

(3) Property treated information. Record the property or facilities name and address. Verify the manager's name, and contact information.

(4) Licensed applicator information. Record licensed applicator's name, company, license number, phone numbers.

(5) Emergency Information. Note the phone number for the nearest hospital, fire department, police department, poison control center and the registrant of the fumigant.

(6) Instructions to personnel. Verify by signatures that all personnel has been instructed to:

(a) Report any accident or incident related to exposure, provide a telephone number for emergency response reporting.

(b) Report to proper authorities any theft of fumigant and/or equipment related to fumigation.

(7) Follow label directions. Monitoring, Notification, Sealing, Application Procedures, Fumigation Period, and Use Restrictions are to be followed per label instructions.

(8) Burrowing Rodent Fumigation Record Keeping. Additional Standards.

(a) In addition to the recordkeeping requirements contained in R68-7-8, the applicator will keep as part of the record a diagram/graph (to scale) of the property treated that includes dimensions of the property, any structure present, and mark each burrow treated on the diagram or graph.

### **R68-7-13. Transportation, Storage, Handling, Using and Disposal of Pesticides and Pesticide Containers.**

All pesticide applying entities shall provide a secure pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.

(1) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, other nontarget species, or the environment.

(2) Pesticide containers shall be secured during transport by use of side or end racks, bracing, chocks, tie downs, or other means to prevent their sliding, falling, tipping, rolling, or falling off the vehicle with normal vehicle acceleration, deceleration, or change in direction.

(3) Portable tanks shall be secured to prevent their sliding, falling, tipping, or rolling with normal vehicle acceleration, deceleration, or change in direction. Stacking or wedging against ends, sidewalls, or doors of van bodies shall not be relied upon for securement.

(4) Pesticides in leaking, broken, corroded, or otherwise damaged containers shall not be displayed, offered for sale, or transported and shall be handled or disposed of in a manner that would not injure humans, other nontarget species, or the environment. Pesticides with obscured, illegible or damaged labels shall not be displayed, offered for sale, or sold.

(5) No person shall distribute or sell any pesticide unless it is in the registrant's or manufacturer's unopened, original container and the registered pesticide label is affixed to the container

(6) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container, apparatus, or

resinate in such a manner as to pollute water supplies or waterways, or cause damage or injury to land, humans, desirable plants and animals, or wildlife. Provided that a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection. Disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(7) No person shall pollute streams, lakes, or other water supplies during pesticide loading, mixing, and application. Adequate, functioning devices and procedures to prevent back siphoning shall be used.

(8) No pesticides shall be applied by aircraft or air blast sprayers to property abutting and/or adjacent to occupied schools in session, hospitals, nursing homes or other similar establishments under conditions that may result in contamination of these establishments or their premises.

(9) No person shall apply pesticides if weather conditions are such that physical drift or volatilization may cause damage to adjacent land, injure humans, other nontarget species, or the environment.

(10) Requirements for unattended pesticides and their containers:

(a) Generally accepted good housekeeping practices shall be maintained for all pesticides and their containers.

(b) The provisions of (d) and (e) of this subsection and subsection (11) of this section shall not apply to empty pesticide containers when adequately decontaminated (e.g., appropriate triple rinsing or other label approved cleaning techniques).

(c) For the purposes of (d) and (e) of this subsection and subsection (11) of this section, pesticides and their containers at the loading area shall not be considered unattended during the spraying operation if the operator maintains either visual control or repeatedly returns at closely spaced intervals as to ensure safe monitoring of the pesticides and containers.

(d) Pesticides labeled with the signal word "danger/poison" and their containers shall be stored in a way which, when unattended, shall be so constructed and locked to prevent children, unauthorized persons, livestock, or other animals from gaining entry.

(e) Pesticides labeled with the signal word "danger" when not accompanied by the signal word "poison," pesticides labeled with the signal word "warning" and pesticides labeled with the signal word "caution" and their containers shall be stored in secured storage out of the reach of children in an enclosure as described in (d) of this subsection: Provided that metal containers, twenty-eight gallons and larger, with tight screw-type bungs and/or secured or locked valves shall be considered secured storage.

(11) Requirements for posting of storage area for pesticides and their containers labeled with the signal words "danger/poison":

(a) For purposes of this subsection, warning signs shall show the skull and crossbones symbol and the words: "Danger/Poison (Pesticide or Chemical) Storage Area/Keep Out" in at least two inch letters.

(b) Warning signs shall be posted:

(i) At each entrance or exit from a storage area and on each exterior wall, so that a sign is visible from any direction;

(ii) If the pesticide storage area is contained in a larger, multipurpose structure, warning signs shall be clearly visible on each entrance of the storage area.

(12) In accordance with State of Utah Agricultural Code, the Utah Department of Agriculture and Food hereby adopts the applicable portions of 40 CFR Part 152 Subpart A Section 152.3 and Part 165, Subparts A through E.

### **R68-7-14. Unlawful Acts.**

Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-2 through 4-2-15:

(1) Made false, fictitious, or fraudulent claims, written or spoken misrepresenting the use, effect of pesticides, certification of applicator, or methods to be utilized;

(2) Applied known ineffective or improper pesticides;

(3) Operated in a faulty, careless or negligent manner;

(4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;

(5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;

(6) Made false or fraudulent records, invoices or reports;

(7) Engaged in the business of, advertised for, or held self out as applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;

(8) Purchased, Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator or designated as a certified private applicators agent;

(9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;

(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;

(13) Impersonated any federal, state, county, or other government official;

(14) Distributed any pesticide labeled for restricted use to any person unless such person or his/her agent has a valid license, or permit to use, supervise the use, or distribute restricted-use pesticide;

(15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.

(16) For an applicator to apply a termiticide at less than label rate.

(17) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide(s) before that individual has successfully completed the prescribed pesticide certification procedures.

(18) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.

(19) To allow an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.

(20) Refused or neglected to register a pesticide applicator business with the Utah Department of Agriculture and Food or follow the rules set forth in section R68-7-8 for licensing of a commercial business.

(21) To handle or apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand.

(22) Refused or neglected to comply with the Federal Container and Containment regulations.

(23) Failure to perform fumigation applications according to the standards required by this rule.

(24) Failed to display business license numbers in

accordance with this rule.

(25) Refused or neglected to notify the customer of the application of a restricted-use pesticide and the information detailed in R68-7-10.

(26) Failure of a qualifying party of the business licensee to train or prepare the applicator to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.

(27) Failure to timely and fully respond to requests by the commissioners designated agent for information relating to training and equipping of applicators.

(28) Transported, stored, handled, used, or disposed of a pesticide or pesticides container inconsistent with rules specified in section R68-7-13.

#### **R68-7-15. Penalty Matrix.**

In the disposition of administrative cases, the Department shall use a penalty matrix to determine appropriate penalties. The Department shall calculate penalties based on the level of violation and the adverse effect(s) or potential adverse effects at the time of the incident(s) giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present.

(1) The Department may consider circumstances enhancing or reducing the penalty based on the seriousness of the violation. Aggravating and mitigating factors include, but are not limited to, the following:

(a) The number of separate alleged violations contained within a single notice of intent.

(b) The magnitude of the harm, or potential harm, including quantity and/or degree, to humans, nontarget species, property, or the environment caused by the violation(s).

(c) The similarity of the current alleged violation to violations committed by the pesticide applicator and/or business during previous years.

(d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(2) The Department will annually review past violation trends and update the penalty matrix based on compliance history.

(a) A copy of the penalty matrix will be made available from the Department upon request.

**KEY: inspections, pesticides**

**June 21, 2011**

**Notice of Continuation February 29, 2016**

**4-14-6**



**R68. Agriculture and Food, Plant Industry.**

**R68-9. Utah Noxious Weed Act.**

**R68-9-1. Authority.**

Promulgated under authority of 4-2-2 and 4-17-3.

**R68-9-2. Designation and Publication of State Noxious Weeds.**

A. The following weeds are hereby officially designated and published as noxious for the State of Utah, as per the authority vested in the Commissioner of Agriculture and Food under Section 4-17-3:

There are hereby designated five classes of noxious weeds in the state: Class 1A (EDRR Watch List), Class 1 (EDRR), Class 2 (Control), Class 3 (Containment), and Class 4 (Prohibited for sale or propagation).

TABLE

Class 1A: Early Detection Rapid Response (EDRR) Watch List  
Declared noxious and invasive weeds not native to the state of Utah and not known to exist in the State that pose a serious threat to the state and should be considered as a very high priority.

Common crupina	Crupina vulgaris
African rue	Peganum harmala
Small bugloss	Anchusa arvensis
Mediterranean sage	Salvia aethiopsis
Spring millet	Milium vernale
Syrian beancaper	Zygophyllum fabago
Ventenata (North Africa grass)	Ventenata dubia
Plumeless thistle	Carduus acanthoides
Malta starthistle	Centaurea melitensis

Class 1B: Early Detection Rapid Response (EDRR)  
Declared noxious and invasive weeds not native to the State of Utah that are known to exist in the state in very limited populations and pose a serious threat to the state and should be considered as a very high priority.

Camelthorn	Alhagi maurorum
Garlic mustard	Alliaria petiolata
Purple starthistle	Centaurea calcitrapa
Goatsrue	Galega officinalis
African mustard	Brassica tournefortii
Giant reed	Arundo donax
Japanese knotweed	Polygonum cuspidatum
Blueweed (Vipers bugloss)	Echium vulgare
Elongated mustard	Brassica elongata
Common St. Johnswort	Hypericum perforatum
Oxeye daisy	Leucanthemum vulgare
Cutleaf vipergrass	Scorzonera laciniata

Class 2: Control  
Declared noxious and invasive weeds not native to the state of Utah, that pose a threat to the state and should be considered a high priority for control. Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control or eradication may be possible.

Leafy spurge	Euphorbia esula
Medusahead	Taeniatherum caput-medusae
Rush skeletonweed	Chondrilla juncea
Spotted knapweed	Centaurea stoebe
Purple loosestrife	Lythrum salicaria
Squarrose knapweed	Centaurea virgata
Dyers woad	Isatis tinctoria
Yellow starthistle	Centaurea solstitialis
Yellow toadflax	Linaria vulgaris
Diffuse knapweed	Centaurea diffusa
Black henbane	Hyoscyamus niger
Dalmation toadflax	Linaria dalmatica

Class 3: Containment  
Declared noxious and invasive weeds not native to the State of Utah that are widely spread. Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations. Known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. These weeds pose a threat to the agricultural industry and agricultural products.

Russian knapweed	Acroptilon repens
Houndstoungue	Cynoglossum officianale
Perennial pepperweed	Lepidium latifolium
(Tall whitetop)	
Phragmites (Common reed)	Phragmites australis ssp.
Tamarisk(Saltcedar)	Tamarix ramosissima
Hoary cress	Cardaria spp.
Canada thistle	Cirsium arvense
Poison hemlock	Conium maculatum
Musk thistle	Carduus nutans
Quackgrass	Elymus repens
Jointed goatgrass	Aegilops cylindrica
Bermudagrass*	Cynodon dactylon
Perennial Sorghum spp.	including but not limited to Johnson Grass (Sorghum halepense)and Sorghum alnum (Sorghum alnum).
	Onopordum acanthium
Scotch thistle (Cotton thistle)	Convolvulus spp.
Field bindweed	
(Wild Morning-glory)	
Puncturevine(Goathead)	Tribulus terrestris

\* Bermudagrass (Cynodon dactylon) shall not be a noxious weed in Washington County and shall not be subject to provisions of the Utah Noxious Weed Law within the boundaries of that county. It shall be a noxious weed throughout all other areas of the State of Utah and shall be subject to the laws therein.

Class 4: Prohibited  
Declared noxious and invasive weeds, not native to the state of Utah, that pose a threat to the state through the retail sale or propagation in the nursery and greenhouse industry. Prohibited noxious weeds are annual, biennial, or perennial plants that the commissioner designates as having the potential or are known to be detrimental to human or animal health, the environment, public roads, crops, or other property.

Cogongrass	Imperata cylindrica
(Japanese blood grass)	
Myrtle spurge	Euphorbia myrsinites
Dames Rocket	Hesperis matronalis
Scotch broom	Cytisus scoparius
Russian olive	Elaeagnus angustifolia

Each county in Utah may have different priorities regarding specific State designated Noxious Weeds and is therefore able to reprioritize these weeds for their own needs.

**R68-9-3. Designations and Publication of Articles Capable of Disseminating Noxious Weeds.**

A. As provided in Section 4-17-3, the following articles are designated and published by the Commissioner as capable of disseminating noxious weeds:

1. Machinery and equipment, particularly combines and hay balers.
2. Farm trucks and common carriers.
3. Seed.
4. Screenings sold for livestock feed.
5. Livestock feed material.
6. Hay, straw, or other material of similar nature.
7. Manure.
8. Soil, sod and nursery stock.
9. Noxious weeds distributed or sold for any purpose.
10. Livestock.

**R68-9-4. Prescribed Treatment for Articles.**

A. As provided in Section 4-17-3, the Commissioner has determined that the following treatments shall be considered minimum to prevent dissemination of noxious weed seeds or such parts of noxious weed plants that could cause new growth by contaminated articles:

1. Machinery and Equipment.
  - a. It shall be unlawful for any person, company or corporation to
    - (1) bring any harvesting or threshing machinery, portable feed grinders, portable seed cleaners or other farm vehicles or machinery into the state without first cleaning such equipment free from all noxious weed seed and plant parts; or

(2) move any harvesting or threshing machinery, portable feed grinders or portable seed cleaners from any farm infested with any noxious weed without first cleaning such equipment free from all noxious weed seed and plant parts.

(a) Immediately after completing the threshing of grain or seed which is contaminated with noxious weeds, such machine is to be cleaned by:

(1) removing all loose material from the top and side of the machine by sweeping with a blower

(2) opening the lower end of elevator, return and measuring device and removing infested material from shakers, sieves, and other places of lodgement;

(3) running the machine empty for not less than five minutes, alternately increasing and retarding the speed; and

(4) following the manufacturer's detailed suggestions for cleaning the machine.

#### 2. Farm Trucks and Common Carriers.

It shall be unlawful for any person, company or corporation to transport seed, screenings or feed of any kind containing noxious weed seed over or along any highway in this State or on any railroad operating in this State unless the same is carried or transported in such vehicles or containers which will prevent the leaking or scattering thereof. All common carriers shall thoroughly clean and destroy any noxious weed seeds or plant parts in cars, trucks, vehicles or other receptacles used by them after each load shall have been delivered to consignee before again placing such car, truck, vehicle or receptacle into service.

#### 3. Seed.

a. It shall be unlawful for any person, firm or corporation to sell, offer or expose for sale or distribute in Utah any agricultural, vegetable, flower or tree and shrub seeds for seeding purposes which contain any seeds of those weeds declared noxious by the Commissioner of Agriculture and Food.

b. It shall be the duty of the State Agricultural Inspector to remove from sale any lots of seeds offered for sale which are found to contain noxious weed seeds. Such seed may be recleaned under the supervision of the inspector and, if found to be free from noxious weed seeds, the same may be released for sale or distribution; otherwise, such seed shall be returned to point of origin, shipped to another state where such weed shall be returned to point of origin, shipped to another state where such weed seed is not noxious, or destroyed or processed in such a manner as to destroy viability of the weed seeds.

#### 4. Screenings Sold for Livestock Feed.

a. All screenings or by-products of cleaning grains or other seeds containing noxious weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy such weed seeds so that the finished product contains not more than six whole noxious weed seeds per pound.

b. All mills and plants cleaning or processing any grains or other seeds shall be required to grind or otherwise treat all screenings containing noxious weed seeds so as to destroy such weed seeds to the extent that the above stated tolerance is not exceeded before allowing the same to be removed from the mill or plant. Such screenings may be moved to another plant for grinding and treatment; provided that: each container or shipment is labeled with the words "screenings for processing - not for seeding or feeding" and with the name and address of the consignor and the consignee.

#### 5. Livestock Feed Material.

a. It shall be unlawful for any person, company or corporation to sell or offer for sale, barter or give away to the ultimate consumer any livestock feed material, including whole grains, which contain more than six whole noxious weed seeds per pound. Whole feed grain which exceeds this tolerance of noxious weed seeds may be sold to commercial processors or commercial feed mixers where the manner of processing will reduce the number of whole noxious weed seed to no more than

six per pound.

#### 6. Hay, Straw or Other Material of Similar Nature.

a. It shall be unlawful for any person, company or corporation to sell or offer for sale, barter or give away any hay, straw, or other material of similar nature, which is contaminated with mature noxious weed seeds or such parts of noxious weed plants which could cause new growth, or to alter, change or falsify in anyway information contained on a phytosanitary certificate.

#### 7. Manure.

a. Manure produced from grain, hay, or other forage infested with noxious weeds shall not be applied or dumped elsewhere than upon the premises of the owner thereof.

#### 8. Soil, Sod and Nursery Stock.

a. No soil, sod or nursery stock which contains or is contaminated with noxious weed seeds, or such parts of the plant that could cause new growth, shall be removed from the premises upon which it is located until cleaned of such weed seed or plant parts, except that such contaminated soil may be used for restrictive non-planting purposes upon permission and under direction of the county weed supervisor or a representative of the Utah Department of Agriculture and Food.

#### 9. Noxious Weeds Distributed or Sold for Any Purpose.

a. It shall be unlawful for any person, company or corporation to sell, barter or give away any noxious weed plants or seeds for any purpose.

#### 10. Livestock.

a. No livestock to which grain, hay, or other forage containing noxious weed seeds has been fed shall be permitted to range or graze upon fields other than those upon which they have been so fed for a period of 72 hours following such feeding. During such period, they shall be fed materials which are not contaminated with noxious weed seeds.

### R68-9-5. Reports From Counties.

A. The Board of County Commissioners of each county, with the aid of their county Weed Board and their County Weed Supervisor, shall submit an "Annual Progress Report of County Noxious Weed Control Program" to the Commissioner of Agriculture and Food by January 15 of each year, covering the activities of the previous calendar year. A prescribed form for this report shall be supplied by the Commissioner.

### R68-9-6. Notices.

A. General and individual notices pertaining to the control and prevention of noxious and invasive weeds shall be substantially of the types prescribed herein; namely, General Notice to Control Noxious Weeds, Individual Notice to Control Noxious Weeds, and Notification of Noxious Weed Lien Assessment.

#### 1. General Notice To Control Noxious Weeds.

A general public notice shall be posted by the County Weed Board in at least three public places within the county and be published in one or more newspapers of general circulation throughout the county, on or before May 1 of each year and at any other times the County Weed Board determines. Such public notice shall state that it is the duty of every property owner to control and prevent the spread of noxious weeds on any land in his possession, or under his control, and shall serve as a warning that if he fails to comply with this notice, enforced weed control measures may be imposed at the direction of county authorities. Such general notice shall also include a list of weeds declared noxious for the State of Utah and for said county, if any.

#### 2. Individual Notice to Control Noxious Weeds.

Following publication of a general notice, if a County Weed Board determines that definite weed control measures are required to control noxious weeds on a particular property, the Board shall cause an individual notice to be served upon the

owner or the person in possession of said property, giving specific instructions concerning when and how the noxious weeds are to be controlled within a specified period of time. The individual notice shall also inform the property owner or operator of legal action which may be taken against him if he fails to comply with said notice.

3. Notification of Noxious Weed Lien Assessment.

If it is deemed advisable, the Board of County Commissioners may cause noxious weeds to be controlled on a particular property and any expenses incurred by the county shall be paid by the owner of record or the person in possession of the property. A notice shall be provided such person, showing an itemized cost statement of the labor and materials necessarily used in the work of said control measures. This notice shall also state that the expense constitutes a lien against the property and shall be added to the general taxes unless payment is made to the County Treasurer within 90 days.

**KEY: noxious weeds, weed classifications, weed control**  
**February 2, 2016** 4-2-2  
**Notice of Continuation June 6, 2013** 4-17-3

**R68. Agriculture and Food, Plant Industry.****R68-18. Quarantine Pertaining to Karnal Bunt.****R68-18-1. Authority.**

(A) Promulgated under authority of Subsection 4-2-2(1)(k)(ii).

(B) The fact has been determined by the Utah Commissioner of Agriculture and Food that a serious fungal disease of wheat, durum wheat, and Triticale known as Karnal bunt (*Tilletia indica* Mitra), not known to exist in the State of Utah, exists in the described infested areas, and the restricted articles and commodities described are hosts or possible carriers of the disease.

(C) The Commissioner, by virtue of the authority vested in him by Section 4-2-2, does establish a quarantine setting forth the name of the fungal disease against which the quarantine is established, the infested area, the articles and commodities regulated, and specifying conditions governing disposition of violations.

**R68-18-2. Disease.**

Karnal bunt (*Tilletia indica* Mitra) in any living state of development.

**R68-18-3. Areas Under Quarantine.**

(A) Entire state of Arizona; Counties in New Mexico: Dona Ana county, Hidalgo county, Luna county and Sierra county; Counties in Texas: El Paso county, Hudspeth county.

(B) Any areas not mentioned above and subsequently found to be infested.

**R68-18-4. Articles and Commodities Under Quarantine.**

(A) The disease Karnal bunt (*Tilletia indica* Mitra) in any living state of development.

(B) Plants of the genus *Triticum* or any plant part hereof.

(C) Any mechanized farming equipment from the areas under quarantine used in the planting or harvesting of small grains.

(D) Any other plant, plant part, article, or means of conveyance when it is determined by the Commissioner, Utah Department of Agriculture and Food or the commissioners duly authorized representative to present a hazard spreading of Karnal bunt organisms.

**R68-18-5. Restrictions.**

(A) All articles and commodities under quarantine are prohibited entry into the state of Utah from any area under quarantine with the following exception:

(1) From uninfested areas of the states listed in R68-18-3, when accompanied by a certificate of origin stating the origin of the material and that the plant material originated from an area not known to be infested with Karnal bunt.

**R68-18-6. Disposition of Violations.**

Any or all shipments or lots of quarantined articles or commodities listed in R68-18-4 arriving in the state of Utah in violation of this order shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner, Utah Department of Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent.

**KEY: plant disease**

**March 18, 1997**

**4-2-2(1)(k)(ii)**

**Notice of Continuation February 8, 2016**

**R70. Agriculture and Food, Regulatory Services.****R70-530. Food Protection.****R70-530-1. Authority and Purpose.**

## (1) Authority.

This rule is promulgated under the authority of Section 4-5-17 UCA.

## (2) Purpose.

This rule shall be liberally construed and applied to promote its underlying purpose of safeguarding public health and providing to consumers food that is safe, unadulterated, and honestly presented.

**R70-530-2. Scope.**

This rule establishes definitions; sets standards for management and personnel, food operations, equipment, and facilities; and provides for food establishment plan review, inspection, and employee restriction. It shall be used to regulate bakeries, grocery and convenience stores, meat markets, food and grain processors, warehouses and any other establishment meeting the definition of a food establishment.

**R70-530-3. Incorporation by Reference.**

(1) The food standards, labeling requirements and procedures as specified in 21 CFR, 1 through 200, 2013 edition, 40 CFR 185, April 17, 2012 edition, and 9 CFR 200 to End, January 1, 2012 edition, are incorporated by reference.

(2) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2013, Chapters 1 through 8 with the exclusion of Subparagraphs 8-302.14(C)(1), Paragraphs 8-302.14(D) and (E), Paragraph 8-304.11(K), Paragraph 5-203.15(B), Paragraphs 5-402.11(B), (C) and (D); and exclusion of Section 8-905.40, Subparagraphs 8-905.90(A)(1) and (2), Section 8-909.20, Subparagraphs 8-911.10(B)(1) and (2), Annex 1 comprising Parts 8-6 through 8-9 with the exclusion of Section 8-905.40, Subparagraphs 8-905.90(A)(1) and (2), Section 8-909.20, Subparagraphs 8-911.10(B)(1) and (2); and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, and with the following additions or amendments:

(a) In Paragraph 1-201.10(B), insert a new subparagraph after subparagraph (b) in subparagraph (2) under "Food Establishment" to read: "(c) A catering operation which is a business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, the client's guests and/or customers at a different location. A catering operation may cook or perform final preparation of foods at the service location. A catering operation does not include routine services offered at the same location, or meals that are individually purchased with the exception of cash bars."

(b) In paragraph-201.10(B), insert a new subparagraph after subparagraph (2) under "Core Item" to read: "(3) 'Core Item' will also be referred to as 'non-critical' in the state rule."

(c) In Paragraph 1-201.10(B) under "Priority Item", replace the semicolon and the word "and" at the end of subparagraph (2) with a period; replace the period at the end of subparagraph (3) with "; and"; and insert a new subparagraph after paragraph (3) to read: "(4) 'Priority Item' will also be referred to as 'critical 1' in the state rule."

(d) In paragraph 1-201.10(B) under "Priority Foundation Item," replace the semicolon and the word "and" at the end of subparagraph (2) with a period; replace the period at the end of subparagraph (3) with "; and"; and add a new subparagraph after subparagraph (3) to read: "(4) 'Priority foundation item' will also be referred to as 'critical 2' in the state rule."

(e) After subparagraph 2-102.11 (17), add a new section to read: "2-102-12 Food Employee Training. Food employees shall be trained in food safety as required under 26-15-5 and

shall hold a valid food handler's permit issued by a local health department."

(f) Amend Paragraph 3-201.16 (A) to read: "Except as specified in paragraph (B) of this section, mushroom species picked in the wild shall not be offered for sale or service by a food establishment."

(g) After Paragraph 3-501.17 (G), add a new paragraph to read: "(H) A date marking system that meets the criteria stated in paragraph (A) of this section shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date: (1) before which food must be used as specified in paragraph (A) of this section; or (2) be the date of Day 1."

(h) Amend Subparagraph 3-501.19(B)(2) to read: "(2) Only one time marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either: (a) the time the food is removed from temperature control; or (b) the time before which the food shall be -cooked and served, served at any temperature if ready-to-eat, or discarded."

(i) After Paragraph 4-204.123(B), add a section to read: "4-204.124 Restraint of Pressurized Containers. Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."

(j) At the end of section 5-101.12, add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

(k) Replace section 5-202.13, with the following: "(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, an air gap between the water supply inlet and the floor level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch). (B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, an air gap between the water supply inlet and the floor level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."

(l) Amend Paragraph 5-203.15(A) to read: "If not provided with an air gap as specified under Section 5-202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed upstream from a carbonating device and downstream from an copper in the water supply line."

(m) Amend Paragraph 5-402.11(A) to read: "A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are place."

(n) Amend section 8-103.11 to add:

(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active managerial control of this risk factor at all times.

(o) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(p) Amend Paragraph 8-304.10(A) to read:

(A) Upon request, the regulatory authority shall provide a copy of the Utah Food Protection Rule according to the policy

of the local regulatory agency.

(q) Amend subparagraph 8-401.10(A) to read: "(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months. (B)(2) to read: "The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction".

(r) Add Paragraph 8-501.10(C) to read: (C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(s) Amend section 8-601.10 to read: Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions. Enforcement of this Rule shall be in accordance with title 4-2-2(J), Title 4-2-12, and R70-201.

(t) Add "8-7 Penalties; 8-701.10 State Construction Code

All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the standards of the state construction code adopted by the Utah Legislature under Title 15A UCA. A copy of the construction code is available at the office of the local building inspector."

(3) All references to food that requires time or temperature control for safety, TCS, in this rule are equivalent to references in past editions of the U.S. Public Health Service, Food and Drug Administration, Food Code to potentially hazardous food, PHF.

**KEY: food, inspections**

**February 2, 2016**

**Notice of Continuation March 7, 2012**

**4-5-17**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-26a. Certified Public Accountant Licensing Act Rule.**  
**R156-26a-101. Title.**

This rule is known as the "Certified Public Accountant Licensing Act Rule".

**R156-26a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 26a, as defined or used in this rule:

(1) "Administering organization" means an organization approved by the Division of Occupational and Professional Licensing and the Utah Board of Accountancy which will administer peer reviews in the Peer Review Program.

(2) "AICPA" means American Institute of Certified Public Accountants.

(3) "Incidental to regular practice" as defined in Subsection 58-26a-305(1)(b) is further defined to mean:

(a) An individual or a firm licensed as a certified public accountant or equivalent designation in any other state, district, or territory of the United States or any foreign country may perform services in this state for a client whose principal office or residence is located outside of this state as long as the services are incidental to primary services being performed outside of this state for that client.

(b) An individual or firm licensed in another jurisdiction, as incidental to their practice in such other jurisdiction, may advertise in this state that their services are available by any means including, but not limited to television, radio, newspaper, magazine or Internet advertising provided such representations are not false, misleading or deceptive; and provided that such individual or firm does not establish a CPA/Client relationship to perform services requiring a CPA license or CPA firm registration with any individual, business or other legal entity having its principal office or residence in this state without first obtaining a CPA license and CPA firm registration in this state.

(c) Incidental to regular practice in another jurisdiction includes a licensed CPA or equivalent designation continuing a CPA/Client relationship with an individual which originated while the client's residence was located outside of this state but thereafter the client moved their residence to this state.

(4) "Qualified continuing professional education (CPE)" as used in this rule means continuing education that meets the standards set forth in Section R156-26a-303b.

(5) "Standard setting bodies" means the Financial Accounting Standards Board, the Government Accounting Standards Board, the American Institute of Certified Public Accountants, the Securities and Exchange Commission, and the Federal Accounting Standards Advisory Board and other generally recognized standard setting bodies.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 26a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-26a-501.

(7) "Year of review" means the calendar year during which a peer review is to be conducted.

**R156-26a-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 26a.

**R156-26a-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.

**R156-26a-201. Advisory Peer Committees Created - Membership - Duties.**

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Education Advisory Committee to the Utah Board of Accountancy consisting of one full-time faculty from each of

five or more colleges or universities in Utah which has an accredited program as set forth in Section R156-26a-302a(1)(a), a majority of which committee are to be licensed CPAs.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities and shall include:

(a) advising the Board as to the acceptability of an educational institution;

(b) assisting the Board to make a final determination pursuant to R156-26a-302a(4)(c) of whether an applicant is qualified to sit for the AICPA examination; and

(c) advising the Board regarding proposed changes to rules.

(3) The committee shall consider, when advising the Board of the acceptability of the educational institution, the following:

(a) the institution's accreditation;

(b) the acceptability by other state licensing boards;

(c) the faculty qualifications; and

(d) other educational resources.

(4) There is created in accordance with Subsection 58-1-203(1)(f), the Peer Review Committee to the Utah Board of Accountancy consisting of not more than ten licensed CPAs. The committee shall be appointed and serve in accordance with Section R156-1-205.

(5) The duties and responsibilities of the Peer Review Committee shall be advising the Board on peer reviews matters and shall include:

(a) reviewing the results of peer reviews administered by approved organizations and requiring corrective action of firms with significant deficiencies noted in the review process when considered necessary in addition to those required by the administering organization;

(b) evaluating compliance of CPE programs;

(c) performing random audits to determine compliance with the CPE requirements and the standards for CPE programs;

(d) reviewing complaints and recommending whether certain acts, practices or omissions violate the ethical standards of the profession;

(e) providing technical assistance to the Division; and

(f) serving as expert witnesses at administrative hearings.

**R156-26a-302a. Qualifications for CPA Licensure - Education Requirements.**

The education requirements for CPA licensure in Subsection 58-26a-302(1)(d) are defined, clarified, or established as follows:

(1) An applicant shall submit transcripts showing completion of course work consisting of a minimum of 150 semester hours (225 quarter hours) as follows:

(a) a graduate or undergraduate program within an institution whose business or accounting education program is accredited by the Association of Advanced Collegiate Schools of Business (AACSB), or the Accreditation Council for Business Schools and Programs (ACBSP), from which the applicant received one of the following:

(i) a graduate degree in accounting;

(ii) a graduate degree in taxation, or a master of business administration degree which includes not less than:

(A) 24 semester hours (36 quarter hours) in upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) 15 semester hours (23 quarter hours) graduate level accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) an equivalent combination of graduate and upper division accounting courses covering the subjects of financial

accounting, auditing, taxation, and management accounting with one hour of graduate level course work being equivalent to 1.6 hours of upper division course work; or

(iii) a baccalaureate degree in business or accounting and 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree which includes not less than:

(A) 16 semester hours (24 quarter hours) in upper division accounting courses, which when combined with the accounting courses listed in Subsection (B) below, have at least one course with a minimum of two semester hours (three quarter hours) each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) eight semester hours (12 quarter hours) in graduate level accounting courses, which when combined with the accounting courses listed in Subsection (A) above, have at least one course each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) 12 semester hours (18 quarter hours) in upper division non-accounting business courses;

(D) 12 semester hours (18 quarter hours) in graduate level business or accounting courses; and

(E) 10 semester hours (15 quarter hours) of either graduate or upper division accounting or business courses.

(b) a graduate or undergraduate program from an institution accredited by the Northwest Commission on Colleges and Universities, North Central Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, Southern Association of Colleges and Schools and Western Association of Schools and Colleges from which the applicant received a baccalaureate or graduate degree with not less than:

(i) 30 semester hours (45 quarter hours) in business or related courses providing a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) business law;

(B) computers;

(C) economics;

(D) ethics;

(E) finance;

(F) statistics and quantitative methods;

(G) written and oral communications; and

(H) business administration such as marketing, production, management, policy or organizational behavior;

(ii) 24 semester hours (36 quarter hours) in upper division accounting courses with a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) auditing;

(B) finance;

(C) managerial or cost;

(D) systems; and

(E) taxes; and

(iii) 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree of additional business related course work including not less than:

(A) eight semester hours (12 quarter hours) in graduate accounting courses;

(B) 12 semester hours (18 quarter hours) in graduate accounting or graduate business courses; and

(C) 10 semester hours (15 quarter hours) of additional business related hours shall be taken in upper division undergraduate or graduate level courses.

(2) The Division in collaboration with the Board or the education subcommittee of the board may make a written finding for cause that a particular accredited institution or program is not acceptable.

(3) The Division in collaboration with the Board or the education subcommittee of the board may accept education of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has

obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

(4) In accordance with Section 58-26a-306, the qualifications to sit for the AICPA examination are clarified or supplemented as follows:

(a) In accordance with Subsection 58-26a-306(1)(a), the form of application approved by the Division shall be the application that CPA Examination Services (CPAES) requires in order to sit for the examination.

(b) In accordance with Subsection 58-26a-306(1)(b), the fee shall be the fee charged by CPAES. No additional fee shall be due to the Division.

(c) In accordance with Subsections 58-26a-306(1)(c) and (d), the Board has approved CPAES to make the determination of whether the applicant has met the education requirements, provided however that, if an applicant disputes the finding of CPAES, the Board shall make a final determination of whether the applicant is qualified to sit for the AICPA examination.

#### **R156-26a-302b. Qualifications for Licensure - Experience Requirements.**

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the experience requirements for licensure in Section 58-26a-302 are clarified, or supplemented as follows:

(1) The Division in collaboration with the board may accept experience of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

#### **R156-26a-302c. Qualifications for Licensure - Examinations.**

The Division in collaboration with the Board may accept testing of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

#### **R156-26a-303a. Renewal Requirements - Peer Review.**

(1) General.

In accordance with Subsections 58-1-308(3)(b) and 58-26a-303(2)(b), there is created a peer review requirement as a condition for renewal of licenses issued under the Certified Public Accountant Licensing Act, providing for review of the work products of CPA and CPA firm licensees.

(a) The purpose of the program is to monitor compliance



with professional standards.

(b) The program shall emphasize education and may include other remedial actions when non-compliance is found.

(c) If a licensee is unwilling or unable to comply with or intentionally disregards professional standards, the administering organization shall refer the matter to the Division for consultation and determination of appropriate action.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(20).

(b) Not less than once in each three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

(c) The administering organization will assign the year of review.

(d) A portion of the peer review may be performed by a regulatory body if the Utah Board of Accountancy approves the regulatory body as an administering organization. This does not by itself satisfy the peer review requirement unless the other standards as specified in this rule are fulfilled by the regulatory body.

(3) Selection of a Peer Reviewer or inspector in the case of inspections mandated by law or regulatory bodies.

A firm scheduled for peer review shall engage a reviewer qualified to conduct the peer review. Regulatory bodies will assign inspectors.

(4) Qualifications of a Peer Reviewer and inspectors.

(a) Peer reviewers must provide evidence of one of the two following minimum qualifications to the administering organization:

(i) acceptance as a peer reviewer by the AICPA; or  
(ii) compliance with the qualifications required by the AICPA to qualify as a peer reviewer.

(b) Peer reviewers must be licensed or hold a permit to practice as a CPA in the state of Utah or another state or jurisdiction of the United States.

(c) The administering organization will approve reviewers for those reviews not administered by the AICPA.

(d) Regulatory bodies will determine the qualifications of inspectors.

(5) Conduct of the Peer Review or inspection. Peer reviews shall be conducted as follows:

(a) Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective January 1, 2009 as amended, which are hereby incorporated by reference and adopted as the minimum standards for peer reviews of all firms. This section shall not require any firm or licensee to become a member of the AICPA or any administering organization.

(b) The Utah Board of Accountancy may review the standards used by the regulatory body to determine if those standards are sufficient to satisfy all or part of the peer review requirements, or what additional review may be required to meet the peer review requirements under this rule.

(6) If an administering organization finds that a peer review was not performed in accordance with this rule or the peer review results in a pass with deficiencies or fail report, the Peer Review Committee may require remedial action to assure that the review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

(a) With respect to a multi-state firm, the Division may accept a peer review based solely upon work conducted outside of this state as satisfying the requirement to undergo peer review under this rule, if:

(i) the peer review is conducted during the year scheduled or rescheduled under R156-26a-303a(2);

(ii) the peer review is performed in accordance with requirements equivalent to those of this state;

(iii) the peer review:

(A) studies, evaluates and reports on the quality control system of the firm as a whole in the case of system reviews; or

(B) results in an evaluation and report on selected engagements in the case of engagement reviews;

(iv) the firm's internal inspection procedures require that the firm's personnel from another office outside the state perform the inspection of the office located in this state not less than once in each three year period; and

(v) at the conclusion of the peer review, the peer reviewer issues a report equivalent to that required by R156-26a-303a(5) or in the case of an approved regulatory body, a report is issued under their standards.

(b) A multi-state firm seeking approval under R156-26a-303a(7)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(8) A firm which does not perform services encompassed in the scope of minimum standards as set out in R156-26a-303a(5)(a) or (b) is exempt from peer review and shall notify the Division of Occupational and Professional Licensing of the exemption at the time of renewal of its registration. A firm which begins providing these services must commence a peer review within 18 months of the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(9) Mergers, Combinations, Dissolutions or Separations.

(a) Mergers or combinations: In the event that two or more firms are merged or sold and combined, the surviving firm shall retain the year of review of the largest firm.

(b) Dissolutions or separations: In the event that a firm is divided, the new firms shall retain the year of review of the former firm. In the event that this period is less than 12 months, a new year shall be assigned so that the review occurs after 12 months of operation.

(c) Upon application to the administering organization and a showing of hardship caused solely by compliance with R156-26a-303a(10), the Division may authorize a change in a firm's year of review.

(10) If the firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled. A request for extension shall be addressed in writing by the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review. The written request for extension must be received by the Division and the administering organization not less than 30 days prior to the date of scheduled review or the request will not be considered. The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the Board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or nonconcurrence, and any proposed remedial actions and related implementation shall be maintained.

(b) The documents described in R156-26a-303a(11)(a) shall be retained for a period of time corresponding to the designated retention period of the relevant administering organization. In no event shall the retention period be less than 120 days.

(12) Costs and Fees for Peer Review.

(a) All costs associated with firm-on-firm reviews will be negotiated between the firm and the reviewer and paid directly

to the reviewer. All costs associated with committee assigned review team (CART) reviews will be set by the administering organization. The administering organization will collect the fees associated with CART reviews and pay the reviewer.

(b) All costs associated with the administration of the review process will be paid from fees charged to the firms. The fees will be collected by the administering organization. The schedule of fees will be included in the administering organization's proposal. The fee schedule will specify how much is to be paid each year and will be based on the firm size.

(13) All financial statements, working papers, or other documents reviewed are confidential. Access to those documents shall be limited to being made available, upon request, to the Peer Review Committee or the technical reviewer for purposes of assuring that peer reviews are performed according to professional standards.

**R156-26a-303b. Renewal and Reinstatement Requirements - Continuing Professional Education (CPE).**

(1) All CPAs are required to maintain current knowledge, skills, and abilities in all areas in which they provide services in order to provide services in a competent manner. To maintain or to obtain the knowledge, skills and abilities to competently provide services, a CPA may be required to obtain CPE above and beyond the 80 minimum CPE credits specified in Section 58-26a-304.

The following standards have been broadly stated in recognition of the diversity of practice and experience among CPAs. They establish a framework for the development, presentation, measurement, and reporting of CPE programs and thereby help to ensure that CPAs maintain the required knowledge, skills and abilities necessary to competently provide services and to enable the CPA to provide evidence of meeting the minimum CPE requirements specified under this rule.

(2) General Standards for CPAs.

(a) Standard No. 1. All CPAs must participate in CPE learning activities that maintain and/or improve their professional competence. This CPE must include a minimum of 80 hours of CPE in each two-year period ending on December 31 of each odd numbered year. The 80 hours shall include at least one hour of education on the Utah Certified Public Accountant Licensing Act and Certified Public Accountant Licensing Act Rule and at least three hours of ethics education which shall cover one or more of the following areas: the AICPA Code of Professional Conduct, case-based instruction focusing on real-life situational learning, ethical dilemmas faced by accounting professionals, or business ethics.

(i) The term "must", as used in these standards, means departure from those specific standards is not permitted. The term "should", as used in these standards, means that CPAs and CPE program sponsors are expected to follow such standards as written and are required to justify any departures from such standards when unusual circumstances warrant such departures.

(ii) Selection of CPE learning activities should be a thoughtful, reflective process addressing the individual CPA's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(iii) A CPA's field of employment does not limit the need for CPE. CPAs performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(iv) Acceptable CPE subjects include accounting, assurance/auditing, consulting services, specialized knowledge

and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the CPA's professional competence. Such subjects may include, but are not limited to: accounting and auditing, taxation, management advisory services, information technology, communication arts, mathematics, statistics, probability and quantitative analysis, economics, business law and litigation support, functional fields of business such as finance, production, marketing, personnel relations, development and management, business management and organizations, social environment of business, and specialized areas of industry such as film industry, real estate, or farming.

(v) To help guide their professional development, CPAs may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development.

(A) A learning plan means a structured process that helps guide CPAs in their professional development. A learning plan is used to evaluate and document learning and professional competence development. A learning plan should be reviewed regularly and modified as a CPA's professional competence needs change. A learning plan should include:

(I) a self-assessment of the gap between current and needed knowledge, skills, and abilities;

(II) a set of learning objectives arising from this assessment; and

(III) learning activities to be undertaken to fulfill the learning plan.

(b) Standard No. 2. CPAs should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with the Standards for CPE Program Presentation (Nos. 8 - 11) and Standard for CPE Program Reporting No. 17.

(i) In addition to minimum CPE requirements specified in this rule, CPAs are responsible for compliance with all applicable CPE requirements, rules, and regulations of other state licensing bodies, other governmental entities and other professional organizations or bodies who have standard setting authority. CPAs should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(ii) Periodically, CPAs may participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If CPAs propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to the Division, other state licensing bodies, and/or all other professional organizations or bodies showing that the learning activity is equivalent to one which meets all these or other applicable Standards.

(c) Standard No. 3. CPAs are responsible for accurate reporting of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including: name and contact information of CPE program sponsor, title and description of content, date of program, location and number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(i) Although CPAs are required to document a minimum level of CPE hours, through periodic reporting of CPE, the objective of CPE must always be maintenance/enhancement of professional competence, not just attainment of minimum credits.

(ii) Compliance with regulatory and other requirements mandates that CPAs keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements for

longer retention, a CPA must retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(iii) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer or publisher.

(d) Standard No. 4. CPAs who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(i) CPAs may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(ii) In order to qualify as CPE, an Internet-based program must qualify as a group program as provided in Subsection R156-26a-303b(3)(b)(i) or as a self-study program as provided in Subsection R156-26a-303b(3)(g).

(e) Standard No. 5. CPAs may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(A) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(B) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(I) all the requirements of the independent study as outlined in the learning contract are met;

(II) the CPE program sponsor reviews and signs the participant's report;

(III) the CPE program sponsor reports to the participant the actual credits earned; and

(IV) the CPE program sponsor provides the participant with contact information.

(ii) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time

devoted to the learning activities and may be less than the actual time involved.

(iii) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(iv) Complete the program of independent study in 15 weeks or less.

(3) Standards for CPE Program Sponsors (Standard 1), Standards for CPE Program Development (Standards 2-7), Standards for CPE Program Presentation (Standards 8-11), Standards for Program Measurement (Standards 12-16), and Standards for CPE Program Reporting (Standards 17-18).

"CPE sponsor", as used herein, means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term "CPE program sponsor" may include associations of CPAs, whether formal or informal, as well as employers who offer in-house programs.

(a) Standard No. 1. CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(i) In addition to the minimum requirements under this rule, CPE program sponsors may have to meet specific CPE requirements of other state licensing bodies, other governmental entities, and/or other professional organizations or bodies. CPE program sponsors should contact the appropriate entity to determine requirements.

(b) Standard No. 2. Sponsored learning activities must be based on relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants in the learning activities.

(i) Learning activities, meaning an educational endeavor that improves or maintains professional competence, provided by CPE program sponsors for the benefit of CPAs, should specify the level, content, and learning objectives so that potential participants can determine if the learning activities are appropriate to their professional competence development needs. Learning activity levels include, for example, basic, intermediate, advanced, update, and overview as defined as follows:

(A) Advanced. Learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

(B) Basic. Learning activity level most beneficial to CPAs new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

(C) Intermediate. Learning activity level that builds on a basic program, most appropriate for CPAs with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

(D) Overview. Learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

(E) Update. Learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

(c) Standard No. 3. CPE program sponsors should develop and execute learning activities in a manner consistent with the prerequisite education, experience, and/or advance preparation

of participants.

(i) To the extent it is possible to do so, CPE program sponsors should make every attempt to equate program content and level with the backgrounds of intended participants. All programs must clearly identify prerequisite education, experience, and/or advance preparation, if any, in precise language so that potential participants can readily ascertain whether they qualify for the program.

(d) Standard No. 4. CPE program sponsors must use activities, materials, and delivery systems that are current, technically accurate, and effectively designed, and may include discussions of ethical issues that may apply to the subject matter. CPE program sponsors must be qualified in the subject matter.

(i) To best facilitate the learning process, sponsored programs and materials must be prepared, presented and updated in a timely manner. Learning activities must be developed by individuals or teams having expertise in the subject matter. Expertise may be demonstrated through practical experience or education.

(ii) CPE program sponsors must review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(e) Standard No. 5. CPE program sponsors of group and self-study programs must ensure learning activities are reviewed by qualified persons other than those who developed them to ensure that the program is technically accurate and current and addresses the stated learning objectives. These reviews must occur before the first presentation of these materials and again after each significant revision of the CPE programs.

(i) Individuals or teams qualified in the subject matter must review programs. When it is impractical to review certain programs in advance, such as lectures given only once, greater reliance should be placed on the recognized professional competence of the instructors or presenters. Using independent reviewing organizations familiar with these standards may enhance quality assurance.

(f) Standard No. 6. CPE program sponsors of independent study learning activities must be qualified in the subject matter.

(i) A CPE program sponsor of independent study learning activities must have expertise in the specific subject area related to the independent study. The CPE program sponsor must also:

(A) Review, evaluate, approve and sign the proposed independent study learning contract, including agreeing in advance on the number of credits to be recommended upon successful completion.

(B) Review and sign the written report developed by the participant in independent study.

(C) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(g) Standard No. 7. Self-study programs must employ learning methodologies that clearly define learning objectives, guide the participant through the learning process, and provide evidence of a participant's satisfactory completion of the program.

(i) To guide participants through a learning process, CPE program sponsors of self-study programs must elicit participant responses to test for understanding of the material, offer evaluative feedback to incorrect responses, and provide reinforcement feedback to correct responses. To provide evidence of satisfactory completion of the course, CPE program sponsors of self-study programs must require participants to successfully complete a final examination with a minimum-passing grade of at least 70 percent before issuing CPE credit for the course.

(A) Evaluative feedback, as used in this subsection, means: specific response to incorrect answers to questions in self-study

programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

(B) Reinforcement feedback, as used in this subsection, means: specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

(ii) Examinations may contain questions of varying format (for example, multiple-choice, essay and simulations.) If objective type questions are used, at least five questions per CPE credit must be included on the final examination. For example, the final examination for a five-credit course must include at least 25 questions.

(iii) Self-study programs must be based on materials specifically developed for instructional use. Self-study programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by a test will not be acceptable. However, the use of the publications and reference materials in self-study programs as supplements to the instructional materials could qualify if the self-study program complies with each of the CPE standards.

(h) Standard No. 8. CPE program sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. To accomplish this, CPE program sponsors must inform participants in advance of: learning objectives, prerequisites, program level, program content, advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements. Instructional delivery methods, as used in this subsection, means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

(i) For potential participants to effectively plan their CPE, the program sponsor should disclose the significant features of the program in advance (e.g., through the use of brochures, Internet notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants should receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

(ii) CPE program sponsors should distribute program materials in a timely manner and encourage participants to complete any advance preparation requirements. All programs should clearly identify prerequisite education, experience, and/or advance preparation requirements, if any, in the descriptive materials. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program.

(i) Standard No. 9. CPE program sponsors must ensure instructors are qualified with respect to both program content and instructional methods used.

(i) Instructors are key ingredients in the learning process for any group program. Therefore, it is imperative that CPE program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable, through training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods and technology, and prepared in advance. As used in this subsection, Group Program means: An educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

(ii) CPE program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

(j) Standard No. 10. CPE program sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives were met.

(i) The objectives of evaluation are to assess participant satisfaction with specific programs and to increase subsequent program effectiveness. Evaluations, whether written or electronic, should be solicited from participants and instructors for each program session, including self-study, to determine, among other things, whether:

(A) Stated learning objectives were met.

(B) If applicable, prerequisite requirements were appropriate.

(C) Program materials were accurate.

(D) Program materials were relevant and contributed to the achievement of the learning objectives.

(E) Time allotted to the learning activity was appropriate.

(F) If applicable, individual instructors were effective.

(G) Facilities and/or technological equipment was appropriate.

(H) Handout or advance preparation materials were satisfactory.

(I) Audio and video materials were effective.

(ii) CPE program sponsors should periodically review evaluation results to assess program effectiveness and should inform developers and instructors of evaluation results.

(k) Standard No. 11. CPE program sponsors must ensure instructional methods employed are appropriate for the learning activities. Instructional methods means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs. Learning activities should be presented in a manner consistent with the descriptive and technical materials provided.

(i) CPE program sponsors should evaluate the instructional methods employed for the learning activities to determine if the delivery is appropriate and effective. Integral aspects in the learning environment that should be carefully monitored include the number of participants and the facilities and technologies employed in the delivery of the learning activity.

(ii) CPE program sponsors are expected to present learning activities that comply with course descriptions and objectives. Appropriate supplemental materials may also be used.

(l) Standard No. 12. Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(i) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits.

(ii) When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(iii) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(iv) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the

following CPE credits: semester system 15 credits; quarter system 10 credits.

(v) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(vi) Credit is not granted to participants for preparation time.

(vii) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(m) Standard No. 13. CPE credit for self-study learning activities must be based on a pilot test of the average completion time.

(i) A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program.

(ii) The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials, further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(n) Standard No. 14. Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards.

(i) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation. For example, for learning activities in which participants could receive 8 CPE credits, instructors may receive up to 24 CPE credits (16 for preparation plus 8 for presentation).

(ii) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(iii) The maximum credit for instructors, discussion leaders or speakers cannot exceed 50 percent of the CPE requirement.

(o) Standard No. 15. Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence.

(i) Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. For the writer to receive CPE credit, the article, book, or CPE program must be formally reviewed by an independent party. CPE credits should be claimed only upon publication.

(ii) The maximum credit for books or articles cannot exceed 25 percent of the CPE requirement.

(p) Standard No. 16. CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract.

(i) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(q) Standard No. 17. CPE program sponsors must provide program participants with documentation of their participation, which includes the following: CPE program sponsor name and

contact information, participant's name, course title, course field of study, date offered or completed, if applicable, location, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, type of instructional/delivery method used, amount of CPE credit recommended, verification by CPE program sponsor representative.

(i) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs: (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(r) Standard No. 18. CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

(i) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to: records of participation, dates and locations, instructor names and credentials, number of CPE credits earned by participants, and results of program evaluations.

(ii) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.

(iii) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:

- (A) When the pilot test was conducted.
- (B) The intended participant population.
- (C) How the sample was determined.
- (D) Names and profiles of sample participants.
- (E) A summary of participants' actual completion time.

(4) Programs or Activities Which Do Not Qualify. The following activities do not satisfy the standards for programs of this section and are not eligible for satisfaction of CPE requirements:

(a) Personal study: personal study includes reading professional journals and publications, studying and researching matters such as tax code revisions, practicing software programs on a computer and watching video movies of a conference; and

(b) Committee meetings, dinner and luncheon meetings, firm meetings or other activities that do not meet the standards outlined in this section.

(5) Reporting Requirements. Each licensee applying for license renewal shall report, by January 31 of each even numbered year, demonstrating completion of at least the minimum number of credits required in Section 58-26a-304 for qualified continuing professional education hours completed for the preceding two calendar years. Each person applying for

license reinstatement shall file a report at the time of application demonstrating completion of the CPE required under Subsection R156-26a-307.

(a) Such report shall be by means of one of the following:

(i) certification from an approved continuing professional education registry of the hours of qualified continuing education completed; or

(ii) a report to the Division for review and approval of continuing professional education.

(b) It is the responsibility of the applicant or licensee to demonstrate to the Division that the applicant or licensee successfully completed all CPE reported and meets the requirements of this section or that the CPE has been approved by an approved continuing professional education registry and that reported courses maintained or increased the professional competence of the applicant or licensee.

(6) Continuing Professional Education Registry. To obtain approval as a continuing professional education registry, an organization shall:

(a) be a professional association primarily consisting of individuals licensed as certified public accountants;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet the standards set forth under this section;

(ii) publish and disseminate to their members or other CPAs on request, listings of continuing professional education programs which meet the standards and are approved for qualified continuing professional education credit;

(iii) maintain accurate records of qualified continuing professional education completed by each of its registrants and provide each of its registrants with a certificate on a timely basis to permit the registrant to file that certificate with the registrant's application to the Division for renewal or reinstatement of his license as a certified public accountant. The certificate shall contain the name of the instructor, the date of the program, location of the program, title of the program, the name of the sponsor, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, and the number of CPE hours granted; and

(iv) make records of approved of qualified continuing professional education programs and records of qualified continuing professional education completed by registrants available for audit by representatives of the Division, the Board or peer advisory committees of the board.

(7) Fees. A registry may charge a reasonable fee to registrants for services provided for approval of courses. Sponsors of approved courses may charge a lower fee to members of the sponsoring association for participation as a registrant than it charges to non-members of the association.

(8) Other CPE requirements and failure to complete CPE requirements.

(a) Interim Licensure CPE requirements. Those individuals who become licensed or certified between renewal periods shall be required to complete CPE based upon ten hours per calendar quarter for the remaining quarters of the reporting period.

(b) Carry Forward Provision. A licensee who completes more than 80 hours of CPE during the two year reporting period may carry forward up to 40 hours to the next succeeding reporting period.

(c) Failure to comply with CPE requirements.

(i) Failure to meet the 80 hour requirement. An individual holding a current Utah license who fails to complete the required 80 hours of CPE by the reporting deadline will not be allowed to renew their license unless they complete and report to the Division at least 30 days prior to their expiration date two

times the number of CPE hours the license holder was short for the reporting period (penalty hours). The penalty hours shall not be considered to satisfy in whole or part any of the CPE hours required for subsequent renewal of the license.

(ii) Non-Qualifying or Disqualified CPE hours. An individual who reports nonqualifying hours or who has hours disqualified by the Utah Board of Accountancy shall not be allowed to renew their license unless they complete and report to the Division, within 60 days of receiving notification by the Division of their shortage and the relevant penalty hours requirement under R156-26-303b(8)(c)(i).

(iii) Waiver for Medical Reasons. A licensee may request the Board to waive the requirements or grant an extension for continuing professional education on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider. Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the continuing professional education, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy. The Board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation. Granting a waiver of meeting the minimum CPE hours shall not be construed as a waiver of a CPA being required to provide services in a competent manner with current knowledge, skill and ability. When medical or other conditions prevent the CPA from providing services in a competent manner, the CPA shall refrain from providing such services.

#### **R156-26a-303c. Renewal Cycle.**

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 26a is established by rule in Section R156-1-308.

#### **R156-26a-303d. Renewal Procedures.**

Renewal procedures shall be in accordance with Section R156-1-308.

#### **R156-26a-307. Reinstatement of Licenses.**

(1) An individual having held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the Division which shall contain information as to why the person allowed their license to lapse;

(b) 80 hours of acceptable CPE, completed within the 12 months preceding the submission of an application for reinstatement, which shall include a minimum of 16 hours in accounting or auditing or both and shall include successful completion of the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with a minimum score of at least the minimum score required for initial licensure. Successful completion of the two examinations will count as eight hours of CPE towards the 80 hour requirement.

(i) The requirements in Subsection R156-26-307(1)(b) are waived if the reinstatement applicant has not been practicing within the state of Utah since the expiration of the license being reinstated, the reinstatement applicant has continuously since the expiration been licensed and practicing in another state and the reinstatement applicant demonstrates that the applicant has met all the CPE requirements that would have been applicable in the state of Utah during the time the license was expired in the state of Utah.

(ii) The requirements in Subsection R156-26a-307(1)(b) are waived, if the applicant failed to renew because of inadvertent failure to pay the renewal fees, to sign application documents, or to meet similar technical application requirements and the application for reinstatement is filed with the Division within 24 months after expiration date of the license and at time of application for reinstatement the applicant demonstrates by proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(2) A licensee who reinstates their license must obtain ten hours of CPE per full calendar quarter remaining in the current CPE reporting period after reinstatement is granted.

(3) The number of hours required to reinstate the license shall not be considered to satisfy in whole or part any of the 80 hours of CPE required for subsequent renewal of the license.

#### **R156-26a-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted June 1, 2008, which is hereby incorporated by reference; or

(3) a CPA firm using the name of a person who is not a licensed certified public accountant as part of the CPA firm name with the exception that a CPA firm may continue to use the name of a former owner who was a CPA but who has retired or is no longer active in the CPA firm.

**KEY: accountants, licensing, peer review, continuing professional education**

**February 11, 2016**

**Notice of Continuation November 15, 2011** **58-26a-101**  
**58-1-106(1)(a)**  
**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.  
R156-55c. Plumber Licensing Act Rule.  
R156-55c-101. Title.**

This rule is known as the "Plumber Licensing Act Rule".

**R156-55c-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

(1) "Immediate supervision", as used in Subsections 58-55-102(5) and 58-55-102(23) and this rule, means the apprentice and the supervising plumber are physically present on the same project or job site but are not required to be within sight of one another.

(2) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i) and this rule, means:

(a) repair or replacement of the following residential type appliances:

- (i) dishwashers;
- (ii) refrigerators;
- (iii) freezers;
- (iv) ice makers;
- (v) stoves;
- (vi) ranges;
- (vii) clothes washers; and
- (viii) clothes dryers; and

(b) repair or replacement of other plumbing fixtures and appliances inside the occupied space of a structure, when the cost of the repair or replacement does not exceed \$300 in total value, including all labor and materials, and including all changes or additions to the contracted or agreed upon work.

(3) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

**R156-55c-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

**R156-55c-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.

**R156-55c-302a. Qualification for Licensure - Training and Instruction Requirement.**

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:

(1) An applicant for a journeyman plumber's license shall demonstrate successful completion of the requirements of either paragraph (a) or (b):

(a)(i) 8,000 hours of training and instruction in not less than four years that meets the requirements of Subsections R156-55c-302a(4) and (6).

(ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);

(iii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.

(b)(i) 16,000 hours of on the job training and instruction

in not less than eight years;

(ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iii) the hours shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(iv) the hours obtained in any work process shall be at least the number of hours listed in Table I.

TABLE I  
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	200
B. Installation of piping for waste, soil, sewer and vent lines	2,000
C. Installation of hot and cold water for domestic purposes	1,400
D. Installation and setting of plumbing appliances and fixtures	1,200
E. Maintenance and repair of plumbing	600
F. General pipe work including process and industrial hours	600
G. Gas piping or service piping	400
H. Welding, soldering and brazing as it applies to the trade	100
I. Service and maintenance of gas controls and equipment	100
J. Hydronics piping and equipment installation	300
K. Fire suppression system installation	100

(2) An applicant for a residential journeyman plumber's license shall demonstrate successful completion of the requirements of paragraph (a) or (b):

(a)(i) 6,000 hours of training and instruction in not less than three years that meets the requirements of Subsections R156-55c-302a(4) and (6).

(ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);

(iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

(b)(i) 12,000 hours of experience in not less than six years which has been documented using a form provided by the Division;

(ii) the experience shall be obtained while licensed as an apprentice plumber;

(iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;

(iv) the hours shall be in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

TABLE II  
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	100
B. Installation of piping for waste, soil, sewer and vent lines	1,600
C. Installation of hot and cold water for domestic purposes	1,200
D. Installation and setting of plumbing appliances and fixtures	800
E. Maintenance and repair of plumbing	600
F. Gas piping or service piping	400
G. Service and maintenance of gas controls and equipment	100



H. Welding, soldering and brazing as it applies to the trade	100
I. Hydronics piping and equipment installation	300
J. Fire suppression system installation	100

(3) A licensed residential journeyman plumber applying for a journeyman plumber's license shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber, which shall include successful completion of an approved fourth year course of classroom instruction.

(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.

(5) Formal classroom instruction required by this section shall meet the following requirements:

(a) instruction shall be conducted by an entity approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or by another similar out of state body that approves formal plumbing educational programs; and

(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.

(6) Apprentice plumbers shall engage in the plumbing trades only in accordance with the following:

(a) except as provided in Subsection 58-55-302(3)(e)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;

(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and

(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.

**R156-55c-302b. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are defined, clarified, or established as follows:

(1) The applicant shall obtain a score of 70% on the Utah Plumbers Licensing Examination that shall consist of a written section and practical section.

(2) Admission to the examinations is permitted after:

(a) the applicant has completed all requirements for licensure set forth in this section and in Sections R156-55c-302a and R156-55c-302b; or

(b) the applicant has completed:

(i) the apprentice education program set forth in Subsection R156-55c-302a(1)(a)(ii); and

(ii) not less than 6,000 hours of the experience required under Subsection R156-55c-302a(1)(a)(i).

(3) (a) If an applicant fails one or more sections of the examination, the applicant shall retake any section of the examination failed.

(b) An applicant shall wait at least 25 days for the first two retakes and thereafter shall wait 120 days between retakes.

(4) If an applicant passes any section of the examination but does not pass the entire examination, the passing score on any section of the examination shall be valid for one year from the date the section of the examination was passed. Thereafter, the applicant shall retake any previously passed section of the examination that is no longer valid to support any subsequent application for licensure.

**R156-55c-302c. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.**

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:

(a) supervising employees: 700 hours;

(b) supervising construction projects: 700 hours;

(c) cost/price management: 300 hours; and

(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.

(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):

(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the immediate supervision of the applicant's employer; and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302d(1).

(a) The degree shall be accredited by one of the following:

(i) Middle States Association of Colleges and Schools;

(ii) New England Association of Colleges and Schools;

(iii) North Central Association of Colleges and Schools;

(iv) Northwest Commission on Colleges and Universities;

(v) Southern Association of Colleges and Schools; or

(vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of study:

(i) accounting;

(ii) apprenticeship;

(iii) business management;

(iv) communications;

(v) computer systems and computer information systems;

(vi) construction management;

(vii) engineering;

(viii) environmental technology;

(ix) finance;

(x) human resources; or

(xi) marketing.

**R156-55c-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(1).

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

**R156-55c-304. Continuing Education - Standards.**

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 12 hours of continuing

education during each two year license term. A minimum of eight hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering:

- (a) International Building, Mechanical, Plumbing Codes and Utah building code amendments as adopted or proposed for adoption;
- (b) the Americans with Disability Act;
- (c) medical gas, National Fire Protection Association 13D and 54; and
- (d) hydronics and waste water treatment.

(3) "Professional continuing education" is defined as education covering:

- (a) energy conservation, management training, new technology, plan reading; and
  - (b) lien laws and Utah construction registry.
- (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 education 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 plumbing trade.

(c) Content. The content of the course shall be relevant to the practice of the plumbing 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 that is provided through internet or home study courses may be recognized for continuing education if 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 that contains the following information:

- (i) the date of the course;
- (ii) the name of the course provider;
- (iii) the name of the instructor;
- (iv) the course title;
- (v) the hours of continuing education credit;
- (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 that 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.

#### **R156-55c-305. Licensure by Endorsement.**

The Division may issue a license by endorsement in

accordance with the provisions of Section 58-1-302.

**R156-55c-401. Conduct of Apprentice and Supervising Plumber.**

(1) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with Subsections 58-55-302(3)(e), 58-55-501, 58-55-502 and R156-55c-501.

(2) For the purposes of Subsections 58-55-302(3)(e) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same plumbing contractor; or

(b) the plumbing contractor may contract with a licensed professional employer organization to employ such persons.

**R156-55c-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) failing to comply with the supervision requirements established by Subsection 58-55-302(3)(e);

(2) failing as a licensed plumber to carry a copy of his current plumber's license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the Division or any law enforcement officer;

(3) failing as a plumbing contractor to certify work experience and supervisory hours when requested by a plumber who is or has been an employee of the plumbing contractor; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

**R156-55c-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 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, plumbers, plumbing  
October 9, 2014 58-1-106(1)(a)  
Notice of Continuation October 4, 2011 58-1-202(1)(a)  
58-55-101**

**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: \$5,000-\$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 February 8, 2016**

**58-67-101**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-73. Chiropractic Physician Practice Act Rule.**  
**R156-73-101. Title.**

This rule is known as the "Chiropractic Physician Practice Act Rule".

**R156-73-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 73, as used in Title 58, Chapters 1 and 73, or this rule:

(1) "Clinical acupuncture" means the application of mechanical, thermal, manual, and/or electrical stimulation of acupuncture points and meridians, including the insertion of needles, by a chiropractic physician that has demonstrated competency and training by completing a recognized course that is sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b.

(2) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, including internet, audio/visual recordings, mail or other correspondence.

(3) "FCLB" means the Federation of Chiropractic Licensing Boards.

(4) "Indirect supervision" means the supervising licensed chiropractic physician shall be available for immediate voice contact by telephone, radio, or other means and shall provide daily face to face consultation and review of cases at the chiropractic facility for the chiropractic intern, temporarily licensed or unlicensed person being supervised.

(5) "Joint mobilization", as used in Subsection 58-73-601(2)(c)(ii)(B) means passive movements done by another person, applied as a series of stretches or repetitive movements to individual or combinations of joints, not to exceed the end range of motion and stopping short of the articular elastic barrier.

(6) "NBCE" means the National Board of Chiropractic Examiners.

(7) "PACE" means Providers of Approved Continuing Education sponsored by the Federation of Chiropractic Licensing Boards.

(8) "Preceptor" means a licensed chiropractic physician who is a supervisor of interns and externs in the professional practice of chiropractic.

(9) "Preceptorship" means a supervised training program established by a written contract between a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., and a licensee for the purpose of providing chiropractic training to a student enrolled in the chiropractic college or university while under the supervision of a licensee.

(10) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 73, is further defined in accordance with Subsection 58-1-203(5), in Section R156-73-501.

**R156-73-103. 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 73.

**R156-73-104. 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.

**R156-73-302. Good Moral Character - Disqualifying Convictions.**

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Section 58-73-302 and whether the applicant has been involved in unprofessional

conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Parts 12 and 13, shall disqualify an applicant from becoming licensed; or

(b) a criminal conviction for the following crimes may disqualify an applicant from becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

**R156-73-302a. Qualifications for Licensure - Education Requirements.**

In accordance with Subsection 58-73-302(1)(d), graduation from a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., is evidence of having satisfactorily completed at least two years of general study in a college or university.

**R156-73-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-73-302(1)(f)(i), the approved written clinical competency examination is the National Chiropractic Board Part 3 or the Special Purposes Examination for Chiropractic (SPEC) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

(2) In accordance with Subsection 58-73-302(1)(f)(iii), the approved practical examination is the National Chiropractic Board Part 4 (practical examination) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

**R156-73-303. Temporary License.**

In accordance with Subsections 58-1-303(1)(a) and 58-73-302(2), an endorsement applicant may be issued a temporary license for a period of not more than six months under the following conditions:

(1) The licensee shall work under the indirect supervision of a chiropractic physician approved by the division.

(2) The supervising chiropractic physician shall:

(a) be available at all times to provide advice, instruction

and consultation;

(b) assume responsibility for all chiropractic activities and services performed by the temporary licensee; and

(c) supervise no more than two persons at any given time.

(3) The temporary license may not be renewed or extended for any purpose.

(4) Any change in supervising chiropractic physician shall be preapproved by the division.

**R156-73-303a. Continuing Education - Renewal Requirement.**

(1) In accordance with Subsection 58-73-303(2), each licensee shall complete 40 hours of continuing education in each preceding two year period of licensure.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be prorated to the part of that two year period during which the person is licensed.

**R156-73-303b. Continuing Education - Standards.**

(1) The standards for continuing education are as follows:

(a) the content must be relevant to chiropractic practice and consistent with the laws and rules of this state;

(b) the course must be under the sponsorship of or approved by:

(i) a chiropractic college or university whose doctor of chiropractic program is accredited by the Council on Chiropractic Education, Inc.;

(ii) a professional or nonprofit organization or association representing a licensed profession that has open membership and election of officers whose program objectives relate to the practice of chiropractic;

(iii) the licensing agency of Utah or another state; or

(iv) PACE;

(c) learning objectives must be reasonably and clearly stated;

(d) teaching methods must be clearly stated and appropriate;

(e) faculty must be qualified, both in experience and in teaching expertise;

(f) documentation of attendance must be provided;

(g) there shall be no more than four clock hours related to chiropractic practice marketing or practice building;

(h) no more than 10 hours of continuing education, in each two year period of licensure, may be by distance learning.

(2) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of two years after close of the two year period to which the records pertain.

(3) The board may, after review, waive the continuing education requirements for a licensee presenting sufficient evidence of hardship or illness or other reason making it impossible or highly impractical for the licensee to attend or have attended a sufficient number of continuing education classes.

(4) As part of the 40 continuing education hours required every two years, a chiropractic physician, who provides acupuncture services as a part of their practice, shall complete 10 hours of acupuncture related continuing education.

**R156-73-304. Preceptorship - Approved Form of Supervision.**

In accordance with Subsection 58-73-304(2), the approved form of supervision is defined, clarified or established as follows:

(1) The supervising preceptor shall:

(a) be licensed in good standing in Utah and have practiced as a licensed chiropractic physician for the past five years;

(b) have entered into a written contract with an approved college or university to provide chiropractic training to a preceptee; and

(c) provide direct supervision on the premises, either personally or by delegating to another chiropractic physician who is licensed in good standing in Utah and who has practiced as a licensed chiropractic physician for the past five years.

(2) The preceptor or his designee must remain on the premises at all times while the preceptee is performing the following procedures:

(a) adjusting of the articulation of the spinal column;

(b) diagnosis of the articulation of the spinal column;

(c) manipulation of the articulation of the spinal column; and

(d) therapeutic positioning of the articulation of the spinal column.

**R156-73-308. 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 73, is established by rule in Section R156-1-308a.

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

**R156-73-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) keeping the office, instruments, laboratory, equipment, appliances or supplies in an unsafe or unsanitary condition;

(2) engaging in advertising which is misleading because of omission of necessary material information, which contains false or misleading statements, or which otherwise operates to deceive;

(3) engaging in or abetting deceptive or fraudulent billing practices;

(4) engaging in sexual contact with a patient, with or without patient consent, within 12 months of last treatment;

(5) engaging in sexual activities or contact with a former patient, with or without consent, after 12 months of last treatment if there is a risk of exploitation or potential harm to the former patient;

(6) engaging in behaviors in a patient/doctor relationship, including verbal, intended to sexually arouse any person or encourage sexual activity;

(7) failing to keep the division informed of a current address and telephone number;

(8) advertising acupuncture services or practicing clinical acupuncture techniques beyond the scope of the certification held;

(9) advertising as an "acupuncturist" either verbally or in print;

(10) failing to maintain responsibility for care, billing and documentation in a group practice, multidisciplinary practice or third-party ownership practice;

(11) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through education or training;

(12) administering injections through the skin, limited to subcutaneous or intramuscular administration, of any substances other than non-prescription drugs as defined in Subsections 58-17b-102(39) or non-controlled substances as defined in Subsection 58-37-2(1)(f)(ii);

(13) administering injections of non-prescription drugs or non-controlled substances without sufficient competency and training as demonstrated by the following:

(a) completion of a recognized course on injectables and their administration, under the sponsorship of or approved by an institution, organization or association meeting the continuing education standards as defined in Section R156-73-303b; and

(b) receiving a passing score on a certifying examination; and  
 (14) delegating the administration of injections to a chiropractic assistant.

**R156-73-502. Chiropractic Assistant.**

In accordance with Subsection 58-73-102(3), a chiropractic assistant may perform activities related to the practice of chiropractic in accordance with the following:

- (1) The supervising chiropractic physician shall:
  - (a) be currently licensed in Utah;
  - (b) be responsible for the chiropractic activities and services performed by the assistant; and
  - (c) always be available to provide advice, instruction and consultation.
- (2) The supervising chiropractic physician shall never delegate the following to a chiropractic assistant:
  - (a) adjustment of the articulation of the spinal column;
  - (b) diagnosis of the articulation of the spinal column;
  - (c) manipulation of the articulation of the spinal column;
  - (d) therapeutic positioning of the articulation of the spinal column; and
  - (e) administration of injections per Subsection R156-73-501(14).

**R156-73-601. Competency Requirements to Perform Acupuncture.**

The requirements to demonstrate competency and training to perform clinical acupuncture include:

- (1) Licensees who provided acupuncture services as a part of their practice prior to January 1, 2002 are not required to meet the requirements of Subsections (2) or (3), but are required to complete a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction and passing a certifying examination in order to continue to provide clinical acupuncture as a part of their practice after January 1, 2002.
- (2) Licensees who begin providing clinical acupuncture as a part of their practice on or after January 1, 2002 and prior to January 1, 2005 shall:
  - (a) complete a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 200 classroom hours of instruction and passing a certifying examination; or
  - (b) complete a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction, passing a certifying examination, and completing 100 hours of clinical experience under the indirect supervision of a licensed health care provider who has met the requirements in Subsection (1) or (2)(a), and has practiced clinical acupuncture for at least two years.
- (3) Licensees who begin providing clinical acupuncture as a part of their practice on or after January 1, 2005 shall:
  - (a) meet the requirements to take and receive a passing score on the NBCE Acupuncture Examination; or
  - (b) meet the requirements to take and receive a passing score on the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) Examination.

**R156-73-602. Advisory Peer Committee Created - Membership - Duties.**

In accordance with Subsection 58-73-602(3), there is created the Quality and Standards Committee as an advisory peer committee to the Chiropractic Physician Licensing Board consisting of five chiropractic physicians licensed and in good

standing in Utah who are qualified by education, training and experience to competently act in quality care review.

**R156-73-603. Standards for Practice of Animal Chiropractic.**

In accordance with Subsection 58-28-307(12)(a), a chiropractic physician practicing animal chiropractic shall have completed an animal chiropractic course approved by the American Chiropractic Veterinary Association (ACVA) or another course that is substantially equivalent to the ACVA course.

**R156-73-605. Review of Applicant's Qualification for Licensure.**

All new licensees may be requested to attend a regularly scheduled Board meeting within six months of license activation at which time their qualifications may be reviewed.

**KEY: chiropractors, licensing, chiropractic physician**  
**August 24, 2009** **58-73-101**  
**Notice of Continuation February 11, 2016** **58-1-106(1)(a)**  
**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.****R156-82. Electronic Prescribing Act Rule.****R156-82-101. Title.**

This rule is known as the "Electronic Prescribing Act Rule."

**R156-82-103. 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 82.

**R156-82-201. Security.**

(1) Practitioners and pharmacies who transmit and receive controlled substance prescriptions shall comply with 21 CFR 1311, as amended March 31, 2010, and subsequently amended.

(2) Electronic prescribing for non-controlled substances shall be conducted in a secure manner, consistent with industry standards.

**R156-82-202. Informing Patients.**

(1) Practitioners shall fully inform their patients of their:

- (a) rights;
- (b) restrictions; and
- (c) obligations pertaining to electronic prescribing.

**R156-82-203. Waiver.**

The Division may grant an exemption from the requirements in accordance with Subsection 58-82-201(6).

**KEY: licensing, electronic prescribing**

**February 8, 2016**

**58-1-106(1)(a)**

**58-82-101**

**R162. Commerce, Real Estate.****R162-2f. Real Estate Licensing and Practices Rules.****R162-2f-101. Title and Authority.**

(1) This chapter is known as the "Real Estate Licensing and Practices Rules."

(2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.

(3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.

(4) The authority to collect fees is granted by Section 61-2f-105.

**R162-2f-102. Definitions.**

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and  
(c) affiliates with a principal brokerage.

(2) "Advertising" means solicitation through:

- (a) newspaper;
- (b) magazine;
- (c) Internet;
- (d) e-mail;
- (e) radio;
- (f) television;
- (g) direct mail promotions;
- (h) business cards;
- (i) door hangers;
- (j) signs; or
- (k) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

- (a) record of an offer to purchase real estate;
- (b) record of a real estate transaction, regardless of whether the transaction closed;
- (c) licensing records;
- (d) banking and other financial records;
- (e) independent contractor agreements;
- (f) trust account records, including:
- (i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and
- (ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and
- (g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division to:

- (a) establish and operate a school that provides courses approved for preclicensing education or continuing education; or
- (b) function as an instructor for courses approved for

preclicensing education or continuing education.

(10) "Closing gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in appreciation for having used the services of a real estate brokerage.

(11) "Commission" means the Utah Real Estate Commission.

(12) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:

(a) core: topics identified in Subsection R162-2f-206c(5)(c); or

(b) elective: topics identified in Subsection R162-2f-206c(5)(e).

(13) "Correspondence course" means a self-paced real estate course that:

(a) is not distance or traditional education; and  
(b) fails to meet real estate educational course certification standards because:

- (i) it is primarily student initiated; and
- (ii) the interaction between the instructor and student lacks substance and/or is irregular.

(14) "Day" means calendar day unless specified as "business day."

(15)(a) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including the following:

- (i) computer conferencing;
- (ii) satellite teleconferencing;
- (iii) interactive audio;
- (iv) interactive computer software;
- (v) Internet-based instruction; and
- (vi) other interactive online courses.

(b) "Distance education" does not include home study and correspondence courses.

(16) "Division" means the Utah Division of Real Estate.

(17) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(18) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:

(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or

(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.

(19) "Guaranteed sales plan" means:

(a) a plan in which a seller's real estate is guaranteed to be sold; or

(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:

- (i) in the specified period of a listing; or
- (ii) within some other specified period of time.

(20) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:

- (a) voluntarily, with the assent of the license holder; or
- (b) involuntarily, without the assent of the license holder.

(21) "Inducement gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in a real estate transaction as an incentive to use the services of a real estate brokerage.

(22) "Informed consent" means written authorization,

obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

(23) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:

- (a) subject to the terms of a limited agency agreement; and
- (b) with the informed consent of all principals to the transaction.

(24) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.

(25)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).

(b) "Non-certified education" does not include:

- (i) home study courses; or
- (ii) correspondence courses.

(26) "Nonresident applicant" means a person:

(a) whose primary residence is not in Utah; and  
 (b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.

(27) "Principal brokerage" means the main real estate or property management office of a principal broker.

(28) "Principal" in a transaction means an individual who is represented by a licensee and may be:

- (a) the buyer or lessee;
- (b) an individual having an ownership interest in the property;
- (c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or
- (d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.

(29) "Provider" means an individual or business that is approved by the division to offer continuing education.

(30) "Property management" is defined in Subsection 61-2f-102(19).

(31) "Registration" means authorization from the division to engage in the business of real estate as:

- (a) a corporation;
- (b) a partnership;
- (c) a limited liability company;
- (d) an association;
- (e) a dba;
- (f) a professional corporation;
- (g) a sole proprietorship; or
- (h) another legal entity of a real estate brokerage.

(32) "Reinstatement" is defined in Subsection 61-2f-102(22).

(33) "Reissuance" is defined in Subsection 61-2f-102(23).

(34) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.

(35) "Renewal" is defined in Subsection 61-2f-102(24).

(36) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(37) "School" means:

- (a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;
- (b) any community college or vocational-technical school;
- (c) any local real estate organization that has been approved by the division as a school; or
- (d) any proprietary real estate school.

(38) "Sponsor" means the party that is the seller of an

undivided fractionalized long-term estate.

(39) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

- (a) mortgage brokers;
- (b) mortgage lenders;
- (c) loan originators;
- (d) title service providers;
- (e) attorneys;
- (f) appraisers;
- (g) providers of document preparation services;
- (h) providers of credit reports;
- (i) property condition inspectors;
- (j) settlement agents;
- (k) real estate brokers;
- (l) marketing agents;
- (m) insurance providers; and
- (n) providers of any other services for which a principal or investor will be charged.

(40) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(41) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

#### **R162-2f-105. Fees.**

Any fee collected by the division is nonrefundable.

#### **R162-2f-201. Qualification for Licensure.**

(1) Character. Pursuant to Subsection 61-2f-203(1)(c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

(a) An applicant shall be denied a license for:

- (i) a felony that resulted in:
  - (A) a conviction occurring within the five years preceding the date of application;
  - (B) a plea agreement occurring within the five years preceding the date of application; or
  - (C) a jail or prison term with a release date falling within the five years preceding the date of application; or
- (ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:
  - (A) a conviction occurring within the three years preceding the date of application; or
  - (B) a jail or prison term with a release date falling within the three years preceding the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

- (i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);
  - (ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;
  - (iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
  - (iv) court findings of fraudulent or deceitful activity;
  - (v) evidence of non-compliance with court orders or conditions of sentencing; and
  - (vi) evidence of non-compliance with:
    - (A) terms of a diversion agreement not yet closed and dismissed;
    - (B) a probation agreement; or
    - (C) a plea in abeyance.
- (c)(i) An applicant who, as of the date of application, is

serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.

(ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include, but are not limited to, the following:

- (A) assault, including domestic violence;
- (B) rape;
- (C) sex abuse of a child;
- (D) sodomy on a child;
- (E) battery;
- (F) interruption of a communication device;
- (G) vandalism;
- (H) robbery;
- (I) criminal trespass;
- (J) breaking and entering;
- (K) kidnapping;
- (L) sexual solicitation or enticement;
- (M) manslaughter; and
- (N) homicide.

(iii) Information and documents submitted in compliance with this Subsection (1)(c) shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.

(2) Competency. In evaluating an applicant for competency, the division and commission may consider evidence including:

- (a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
  - (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
  - (c) suspension or revocation of a professional license;
  - (d) sanctions placed on a professional license; and
  - (e) investigations conducted by regulatory agencies relative to a professional license.
- (3) Age. An applicant shall be at least 18 years of age.
- (4) Minimum education. An applicant shall have:
- (a) a high school diploma;
  - (b) a GED; or
  - (c) equivalent education as approved by the commission.

**R162-2f-202a. Sales Agent Licensing Fees and Procedures.**

(1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:

- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
- (c)(i) successfully complete 120 hours of approved prelicensing education;
- (ii) evidence current membership in the Utah State Bar; or
- (iii) apply to the division for waiver of all or part of the education requirement by virtue of:
  - (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
  - (B) completing other equivalent real estate education within the 12-month period prior to the date of application;
- (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
- (ii) pay a nonrefundable examination fee to the testing center;
- (e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
- (f) pursuant to this Subsection (3)(b), submit to the

division an application for licensure including:

- (i) documentation indicating successful completion of the required prelicensing education;
- (ii) a report of the examination showing a passing score for each component of the examination; and
- (iii) the applicant's business, home, and e-mail addresses;
- (g) if applying for an active license, affiliate with a principal broker; and
- (h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.

(2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:

- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
- (c)(i) successfully complete 120 hours of approved prelicensing education;
- (ii) evidence current membership in the Utah State Bar; or
- (iii) apply to the division for waiver of all or part of the education requirement by virtue of:

- (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;
- (B) completing other equivalent real estate education within the 12-month period prior to the date of application; or
- (C) having been licensed in a state that has substantially equivalent prelicensing education requirements;
- (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
- (ii) pay a nonrefundable examination fee to the testing center;
- (e)(i) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination; or
- (ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:

- (A) take and pass the state component of the licensing examination; and
- (B) apply to the division for a waiver of the national component of the licensing examination;
- (f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
  - (i) documentation indicating successful completion of the required prelicensing education;
  - (ii) a report of the examination showing a passing score for each component of the examination; and
  - (iii) the applicant's business, home, and e-mail addresses;
  - (g) provide from any state where licensed;
  - (i) a written record of the applicant's license history; and
  - (ii) complete documentation of any disciplinary action taken against the applicant's license;
  - (h) if applying for an active license, affiliate with a principal broker; and
  - (i) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
- (3) Deadlines.
  - (a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:
    - (i) within six months of the date on which the individual achieves a passing score on the passed component; and
    - (ii) within 12 months of the date on which the individual completes the prelicensing education.



- (b) An application for licensure shall be submitted:
  - (i) within 90 days of the date on which the individual achieves passing scores on both examination components; and
  - (ii) within 12 months of the date on which the individual completes the prelicensing education.
- (c) If any deadline in this Section R162-2f-202a falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-202b. Principal Broker Licensing Fees and Procedures.**

- (1) To obtain a Utah license to practice as a principal broker, an individual shall:
  - (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
  - (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
  - (c)(i) successfully complete 120 hours of approved prelicensing education, including:
    - (A) 45 hours of broker principles;
    - (B) 45 hours of broker practices; and
    - (C) 30 hours of Utah law and testing; or
  - (ii) apply to the division for waiver of all or part of the education requirement by virtue of:
    - (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
    - (B) completing other equivalent real estate education within the 12-month period prior to the date of application;
  - (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
  - (ii) pay a nonrefundable examination fee to the testing center;
  - (e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
  - (f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application either:
    - (A) three years full-time, licensed, active real estate experience; or
    - (B) two years full-time, licensed, active, real estate experience and one year full-time professional real estate experience from the optional experience table in Appendix 3; and
  - (ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 documented experience points complying with R162-2f-401a, as follows:
    - (A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2, of which a maximum of 25 points may have been accumulated from the "All other property management" subsections of Appendix 2; and
    - (B) 0 to 15 points pursuant to the experience point table found in Appendix 3; and
  - (iii) a minimum of one-half of the experience points from Tables 1 and 2 must derive from transactions of properties located in the state of Utah;
  - (iii) if an individual submits evidence of experience points for transactions involving a team or group, experience points are limited to those transactions for which the individual is named in any written agency agreements and purchase and/or lease contracts and the applicable experience points will be divided proportionally among the licensees identified in the agency agreements and and/or lease contracts;
  - (g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
    - (i) documentation indicating successful completion of the approved broker prelicensing education;
    - (ii) a report of the examination showing a passing score for

- each component of the examination; and
  - (iii) the applicant's business, home, and e-mail addresses;
  - (h) provide from any state where licensed as a real estate agent or broker:
    - (i) a written record of the applicant's license history; and
    - (ii) complete documentation of any disciplinary action taken against the applicant's license;
  - (i) if applying for an active license, affiliate with a registered company;
  - (j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and
  - (k) establish real estate and property management trust accounts, as applicable pursuant to Section R162-2f-403, that:
    - (i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and
    - (ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker; and
  - (l) identify the location(s) where brokerage records will be kept.
- (2)(a) If an individual applies under this Subsection R162-2f-202b within two years of allowing a principal broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.
- (b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.
- (3) Deadlines.
  - (a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:
    - (i) within six months of the date on which the individual achieves a passing score on the passed component; and
    - (ii) within 12 months of the date on which the individual completes the prelicensing education.
  - (b) An application for licensure shall be submitted:
    - (i) within 90 days of the date on which the individual achieves passing scores on both examination components; and
    - (ii) within 12 months of the date on which the individual completes the prelicensing education.
  - (c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.
- (4) Restriction. A principal broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.
- (5) Dual broker licenses.
  - (a)(i) A person who holds or obtains a dual broker license under this Subsection may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.
  - (ii) A dual broker may not conduct real estate sales activities from the separate property management company.
  - (iii) A principal broker may conduct property management activities from the person's real estate brokerage:
    - (A) without holding a dual broker license; and
    - (B) in accordance with Subsections R162-2f-401j and R162-2f-403a-403c;
  - (b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:
    - (i) at the broker's request, convert the dual broker license to a principal broker license; and
    - (ii)(A) convert the property management company to a branch office of the real estate brokerage, including the

assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

(c) As of May 8, 2013:

(i) the Division shall:

(A) cease issuing property management principal broker (PMPB) licenses;

(B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;

(C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and

(D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and

(ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to this Subsection (5)(c)(i)(C).

#### **R162-2f-202c. Associate Broker Licensing Fees and Procedures.**

To obtain a Utah license to practice as an associate broker, an individual shall:

(1) comply with Subsections R162-2f-202b(1)(a) through (j); and

(2) if applying for an active license, affiliate with a principal broker.

#### **R162-2f-203. Inactivation and Activation.**

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(b) To voluntarily inactivate a principal broker license, the principal broker shall:

(i) prior to inactivating the license:

(A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and

(B) provide to the division evidence that the licensee has complied with this Subsection (1)(b)(i)(A); and

(ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(c) The license of a sales agent or associate broker is involuntarily inactivated upon:

(i) termination of the licensee's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

(d) The registration of an entity is involuntarily inactivated upon:

(i) termination of the entity's affiliation with a principal broker; or

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.

(e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.

(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

(i) the order shall state the effective date of the suspension or revocation; and

(ii) prior to the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;

(ii) submit proof of:

(A) having been issued an active license at the time of last renewal;

(B) having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics; or

(C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;

(iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or

(B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and

(iv) pay a non-refundable activation fee.

(b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

#### **R162-2f-204. License Renewal.**

(1) Renewal period and deadlines.

(a) A license issued under these rules is valid for a period of two years from the date of licensure.

(b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).

(c) In order to renew on time without incurring a late fee:

(i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and

(ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:

(A) by the license expiration date, if that date falls on a day when the division is open for business; or

(B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.

(2) Qualification for renewal.

(a) Character and competency.

(i) An individual applying for a renewed license shall evidence that the individual maintains character and competency as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony conviction since the last date of licensure; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government agency since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.

(b) Continuing education.

(i) To renew at the end of the first renewal cycle, an individual shall complete:

(A) the 12-hour new sales agent course certified by the division; and

(B) an additional six non-duplicative hours of continuing education:

(I) certified by the division as either core or elective; or

(II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).

(ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:

(A) complete 18 non-duplicative hours of continuing education:

(I) certified by the division;

(II) including at least nine non-duplicative hours of core curriculum; and

(III) taken during the previous license period; or

(B) apply to the division for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:

(I) were not required under Subsection R162-2f-206c(1)(a) to be certified; and

(II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(iii)(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(k).

(B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(k), an individual who attended the course may obtain credit by:

(I) filing a complaint against the provider; and

(II) submitting the course completion certificate to the division.

(c) Principal broker. In addition to meeting the requirements of this Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:

(i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and

(ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.

(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, prior to the expiration of the license:

(i) submit the forms required by the division, including proof of having completed continuing education pursuant to this Subsection (2)(b); and

(ii) pay a nonrefundable renewal fee.

(b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) - (d):

(i) submit all forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2); and

(ii) pay a nonrefundable reinstatement fee.

(4) Transition to online renewal. An individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

#### **R162-2f-205. Registration of Entity.**

(1) A principal broker may not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

(c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate and property management trust account(s) in which funds received at the registered location will be deposited;

(e) inform the division of:

(i) the location and account number of any operating account(s) used by the registered entity; and

(ii) the location where brokerage records will be kept; and

(f) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;

(B) closely resembles the name of another registered entity; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) All trust accounts and operating accounts used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

#### **R162-2f-206a. Certification of Real Estate School.**

(1) Prior to offering real estate prelicensing or continuing education, a school shall:

(a) first, obtain division approval of the school name; and

(b) second, certify the school with the division pursuant to this Subsection (2).

(2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:

- (a) contact information, including:
  - (i) name, phone number, email address, and address of the physical facility;
  - (ii) name, phone number, email address, and address of each school director;
  - (iii) name, phone number, email address, and address of each school owner; and
  - (iv) an e-mail address where correspondence will be received by the school;

(b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);

(c) evidence that the school name, as approved by the division pursuant to this Subsection (1)(a), is registered with the Division of Corporations and Commercial Code as a real estate education provider;

- (d) school description, including:
  - (i) type of school; and
  - (ii) description of the school's physical facilities;
- (e) list of courses to be offered, including the following:
  - (i) a statement of whether each course is a prelicensing or continuing education course; and
  - (ii) as to a continuing education course, whether it is designed to qualify as fulfilling all or part of the core curriculum requirement for new agents;

(f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

- (g) proof that each instructor is:
  - (i) certified by the division;
  - (ii) qualified as a guest lecturer by having:
    - (A) requisite expertise in the field; and
    - (B) approval from the division; or
  - (iii) exempt from certification under Subsection R162-2f-206d(4);

(h) schedule of courses offered, including the days, times, and locations of classes;

(i) statement of attendance requirements as provided to students;

- (j) refund policy as provided to students;
- (k) disclaimer as provided to students and as specified in Subsection (3)(c);

(l) criminal history disclosure statement as provided to students and as specified in Subsection (3)(d);

(m) disclosure, as specified in Subsection (3)(e), of any possibility of obtaining an education waiver;

(n) course completion policy, as provided to students, describing the length of time allowed for completion and detailed requirements; and

- (o) any other information the division requires.
- (3) Minimum standards.
- (a) The course schedule may not provide or allow for more than eight credit hours per student per day.

(b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.

(c) The disclaimer shall adhere to the following requirements:

- (i) be typed in all capital letters at least 1/4 inch high; and
- (ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."

(d) The criminal history disclosure statement shall:
 

- (i) be provided to each student prior to the school accepting payment; and

(ii) clearly inform the student that upon application with the division, the student will be required to:

(A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;

(B) submit fingerprint cards to the division and consent to a criminal background check; and

(C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and

(iv) include a section for the student's attestation that the student has read and understood the disclosure.

(e) The education waiver disclosure shall adhere to the following requirements:

(i) disclose to students the requirements for obtaining an education waiver while they are still eligible for a full refund;

(ii) be typed in all capital letters at least 1/4 inch high;

(iii) inform the students that the division grants education waivers for qualified individuals; and

(iv) state the following language: "A student accepted or enrolled for education hours cannot later reduce those hours by applying for an education waiver. An education waiver must be obtained before a student enrolls and is accepted by a school for education hours."

(f) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide, to the division's education staff, written notice of the change.

(4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a school certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

#### **R162-2f-206b. Certification Prelicensing Course.**

(1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) comprehensive course outline including:

(i) description of the course, including a statement of whether the course is designed for:

(A) sales agents; or

(B) brokers;

(ii) number of class periods spent on each subject area;

(iii) minimum of three to five learning objectives for every

three hours of class time; and

(iv) reference to the course outline approved by the

commission for each topic;

- (b) number of quizzes and examinations;
- (c) grading system, including methods of testing and standards of grading;
- (d)(i) a copy of at least two final examinations to be used in the course;
- (ii) the answer key(s) used to determine if a student has passed the exam; and
- (iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and
- (e) a list of the titles, authors and publishers of all required textbooks.

(2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:

- (a) all items listed in this Subsection (1);
- (b) description of each method of course delivery;
- (c) description of any media to be used;
- (d) course access for the division using the same delivery methods and media that will be provided to the students;
- (e) description of specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;
- (f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;
- (g) description of how and when certified prelicensing instructors will be available to answer student questions;
- (h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims; and

(i) a description of the complaint process to resolve student grievances.

(3) Minimum standards. A prelicensing course shall:

- (a) address each topic required by the course outline as approved by the commission;
- (b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(d)(i) and these rules;
- (c) limit the credit that students may earn to no more than eight credit hours per day;
- (d) be taught in an appropriate classroom facility unless approved for distance education;
- (e) allow a maximum of 10% of the required class time for testing, including:
  - (i) practice tests; and
  - (ii) a final examination;
- (f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline; and
- (g) reflect the current statutes and rules of the division.

(4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

#### **R162-2f-206c. Certification of Continuing Education Course.**

(1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.

(b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

(2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date

on which the course is proposed to begin, provide the following to the division:

- (a) name and contact information of the course provider;
- (b) name and contact information of the entity through which the course will be provided;
- (c) description of the physical facility where the course will be taught;
- (d) course title;
- (e) number of credit hours;
- (f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:
  - (i) knowledge;
  - (ii) professionalism; and
  - (iii) ability to protect and serve the public;
- (g) course outline including a description of the subject matter covered in each 15-minute segment;
- (h) a minimum of three learning objectives for every three hours of class time;
- (i) name and certification number of each certified instructor who will teach the course;
- (j) copies of all materials to be distributed to participants;
- (k) signed statement in which the course provider and instructor(s):

- (i) agree not to market personal sales products;
- (ii) allow the division or its representative to audit the course on an unannounced basis; and
- (iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:

- (A) course name;
- (B) course certificate number assigned by the division;
- (C) date(s) the course was taught;
- (D) number of credit hours; and
- (E) names and license numbers of all students receiving continuing education credit;
- (l) procedure for pre-registration;
- (m) tuition or registration fee;
- (n) cancellation and refund policy;
- (o) procedure for taking and maintaining control of attendance during class time;
- (p) sample of the completion certificate;
- (q) nonrefundable fee for certification as required by the division; and

(r) any other information the division requires.

(3) To certify a continuing education course for distance education, a person shall:

- (a) comply with this Subsection (2);
- (b) submit to the division a complete description of all course delivery methods and all media to be used;
- (c) provide course access for the division using the same delivery methods and media that will be provided to the students;
- (d) describe specific frequent and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;
- (e) describe how and when certified instructors will be available to answer student questions; and
- (f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(4) Minimum standards.

(a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a private residence.

(b) The minimum length of a course shall be one credit hour.

(c) Except for online courses, the procedure for taking

attendance shall be more extensive than having the student sign a class roll.

(d) The completion certificate shall allow for entry of the following information:

- (i) licensee's name;
- (ii) type of license;
- (iii) license number;
- (iv) date of course;
- (v) name of the course provider;
- (vi) course title;
- (vii) number of credit hours awarded;
- (viii) course certification number;
- (ix) course certification expiration date;
- (x) signature of the course sponsor; and
- (xi) signature of the licensee.

(5) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

- (i) state approved forms and contracts;
- (ii) other industry used forms or contracts;
- (iii) ethics;
- (iv) agency;
- (v) short sales or sales of bank-owned property;
- (vi) environmental hazards;
- (vii) property management;
- (viii) prevention of real estate and mortgage fraud;
- (ix) federal and state real estate laws;
- (x) division administrative rules;
- (xi) broker trust accounts; and
- (xii) water law, rights and transfer.

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

- (i) obtain authorization to use the form(s) or contract(s) taught in the course;
- (ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and
- (iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

- (i) real estate financing, including mortgages and other financing techniques;
- (ii) real estate investments;
- (iii) real estate market measures and evaluation;
- (iv) real estate appraising;
- (v) market analysis;
- (vi) measurement of homes or buildings;
- (vii) accounting and taxation as applied to real property;
- (viii) estate building and portfolio management for clients;
- (ix) settlement statements;
- (x) real estate mathematics;
- (xi) real estate law;
- (xii) contract law;
- (xiii) agency and subagency;
- (xiv) real estate securities and syndications;
- (xv) regulation and management of timeshares, condominiums, and cooperatives;
- (xvi) resort and recreational properties;
- (xvii) farm and ranch properties;
- (xviii) real property exchanging;
- (xix) legislative issues that influence real estate practice;
- (xx) real estate license law;
- (xxi) division administrative rules;
- (xxii) land development;

- (xxiii) land use;
- (xxiv) planning and zoning;
- (xxv) construction;
- (xxvi) energy conservation in buildings;
- (xxvii) water rights;
- (xxviii) landlord/tenant relationships;
- (xxix) property disclosure forms;
- (xxx) Americans with Disabilities Act;
- (xxxi) fair housing;
- (xxxii) affirmative marketing;
- (xxxiii) commercial real estate;
- (xxxiv) tenancy in common;
- (xxxv) professional development;
- (xxxvi) business success;
- (xxxvii) customer relation skills;
- (xxxviii) sales promotion, including:

- (A) salesmanship;
  - (B) negotiation;
  - (C) sales psychology;
  - (D) marketing techniques related to real estate knowledge;
  - (E) servicing clients; and
  - (F) communication skills;
- (xxxix) personal and property protection for licensees and their clients;

(xl) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety;

(xli) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education; and

(xlii) technology courses that utilize the majority of the time instructing students how the technology:

- (A) directly benefits the consumer; or
- (B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.

(f) Unacceptable topics include the following:

- (i) offerings in mechanical office and business skills, including:
  - (A) typing;
  - (B) speed reading;
  - (C) memory improvement;
  - (D) language report writing;
  - (E) advertising; and
  - (F) technology courses with a principal focus on technology operation, software design, or software use;

(ii) physical well-being, including:

- (A) personal motivation;
- (B) stress management; and
- (C) dress-for-success;

(iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:

- (A) sales meetings;
  - (B) in-house staff meetings or training meetings; and
  - (C) member orientations for professional organizations;
- (iv) courses in wealth creation or retirement planning for licensees; and

(v) courses that are specifically designed for exam preparation.

(g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.

(6)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course certification, an applicant shall:

- (i) complete a renewal application as provided by the

division; and

- (ii) pay a nonrefundable renewal fee.
- (c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:
  - (i) comply with all requirements for a timely renewal; and
  - (ii) pay a nonrefundable late fee.
- (d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:
  - (i) comply with all requirements for a timely renewal; and
  - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-206d. Certification of Prelicensing Course Instructor.**

- (1) An instructor shall certify with the division prior to teaching a prelicensing course.
- (2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:
  - (a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);
  - (b) evidence of having graduated from high school or achieved an equivalent education;
  - (c) evidence that the applicant understands the real estate industry through:
    - (i) a minimum of five years of full-time experience as a real estate licensee;
    - (ii) post-graduate education related to the course subject;
  - or
  - (iii) demonstrated expertise on the subject proposed to be taught;
  - (d) evidence of ability to teach through:
    - (i) a minimum of 12 months of full-time teaching experience;
    - (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
    - (iii) attendance at a division instructor development workshop totaling at least two days in length;
  - (e) evidence of having passed an examination:
    - (i) designed to test the knowledge of the subject matter proposed to be taught;
    - (ii) with a score of 80% or more correct responses, and;
    - (iii) within the six-month period preceding the date of application;
  - (f) name and certification number of the certified prelicensing school for which the applicant will work;
  - (g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
  - (h) a signed statement agreeing not to market personal sales products;
    - (i) any other information the division requires;
    - (j) an application fee; and
    - (k) course-specific requirements as follows:
      - (i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and
      - (ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.
  - (3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:

- (a) Brokerage Management. An applicant shall:
  - (i) hold a current real estate broker license;
  - (ii) possess at least two years practical experience as an active real estate principal broker; and
  - (iii)(A) have experience managing a real estate office; or
  - (B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.
- (b) Advanced Real Estate Law. An applicant shall:
  - (i) hold a current real estate broker license;
  - (ii) evidence current membership in the Utah State Bar; or
  - (iii)(A) have graduated from an American Bar Association accredited law school; and
  - (B) have at least two years real estate law experience.
- (c) Advanced Appraisal. An applicant shall hold:
  - (i) a current real estate broker license, or
  - (ii) a current appraiser license or certification from the division.
- (d) Advanced Finance. An applicant shall:
  - (i) evidence at least two years practical experience in real estate finance; and
  - (ii)(A) hold a current real estate broker license;
  - (B) evidence having been associated with a lending institution as a loan officer; or
  - (C) hold a degree in finance.
- (e) Advanced Property Management. An applicant shall hold a current real estate license and:
  - (i) evidence at least two years full-time experience as a property manager; or
  - (ii) hold a certified property manager or equivalent professional designation.
- (4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.
- (5)(a) A prelicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
  - (b) To renew a prelicensing course instructor certification, an individual shall:
    - (i) submit all forms required by the division;
    - (ii) evidence having taught, within the two-year period prior to the date of application, a certified real estate course;
    - (iii) evidence having attended, within the two-year period prior to the date of application, an instructor development workshop sponsored by the division; and
    - (iv) pay a nonrefundable renewal fee.
  - (c) To reinstate an expired prelicensing course instructor certification within 30 days following the expiration date, a person shall:
    - (i) comply with all requirements for a timely renewal; and
    - (ii) pay a nonrefundable late fee.
  - (d) To reinstate an expired prelicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:
    - (i) comply with all requirements for a timely renewal; and
    - (ii) pay a non-refundable reinstatement fee.
  - (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
  - (f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-206e. Certification of Continuing Education Course Instructor.**

- (1) An instructor shall certify with the division before teaching a continuing education course.
- (2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin

instruction, provide the following:

- (a) name and contact information of the applicant;
  - (b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);
  - (c) evidence of having graduated from high school or achieved an equivalent education;
  - (d) evidence that the applicant understands the subject matter to be taught through:
    - (i) a minimum of two years of full-time experience as a real estate licensee;
    - (ii) college-level education related to the course subject; or
    - (iii) demonstrated expertise on the subject proposed to be taught;
  - (e) evidence of ability to teach through:
    - (i) a minimum of 12 months of full-time teaching experience; or
    - (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience;
  - (f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
  - (g) a signed statement agreeing not to market personal sales products;
  - (h) any other information the division requires; and
  - (i) a nonrefundable application fee.
- (3)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
- (b) To renew a continuing education course instructor certification, a person shall:
    - (i) submit all forms required by the division;
    - (ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or
    - (B) submit written explanation outlining:
      - (I) the reason for not having taught a minimum of 12 continuing education credit hours; and
      - (II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and
    - (iii) pay a nonrefundable renewal fee.
  - (c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:
    - (i) comply with all requirements for a timely renewal; and
    - (ii) pay a nonrefundable late fee.
  - (d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:
    - (i) comply with all requirements for a timely renewal; and
    - (ii) pay a non-refundable reinstatement fee.
  - (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
  - (f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-207. Reporting a Change of Information.**

- (1) Individual notification requirements.
  - (a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:
    - (i) change in licensee's name; and
    - (ii) change in licensee's business, home, e-mail, or mailing address.
  - (b) In addition to complying with this Subsection (1)(a):

- (i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and
- (ii) an individual licensed as a principal broker shall report to the division:
  - (A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);
  - (B) change in assignment of branch broker; and
  - (C) termination of the principal broker's affiliation with an entity.
- (2) Entity notification requirements. A registered entity shall report the following to the division:
  - (a) change in entity's name;
  - (b) change in entity's affiliation with a principal broker;
  - (c) change in corporate structure;
  - (d) dissolution of corporation; and
  - (e) change of location where brokerage records are kept.
- (3) Notification procedures.
  - (a) Name. To report a change in name, a person shall submit to the division a paper change form and:
    - (i) if the person is an individual, attach to it official documentation such as a:
      - (A) marriage certificate;
      - (B) divorce decree;
      - (C) court order; or
      - (D) driver license; and
    - (ii) if the person is an entity:
      - (A) obtain prior approval from the division of the new entity name; and
      - (B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.
  - (b) Address. To report a change in address, a person shall enter the change into RELMS.
  - (c) Affiliation.
    - (i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and
    - (A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or
    - (II) comply with this Subsection (4); and
    - (B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.
  - (ii) To terminate an affiliation between a principal broker and an entity:
    - (A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and
    - (B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:
      - (I) cease operations;
      - (II) submit to the division a paper company/branch change form to inactivate the entity registration;
      - (III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;
      - (IV) advise the division as to the location where records will be stored;
      - (V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;
      - (VI) notify each party and cooperating broker to any existing contracts; and
      - (VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until



all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

(iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.

(d) Corporate structure.

(i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and

(B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.

(ii) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).

(e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and

(b) as applicable:

(i) entering the certified mail reference number into the appropriate field on the electronic change form; or

(ii) providing to the division a copy of the certified mail receipt.

(5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.

(6) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division at the time the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

#### **R162-2f-307. Undivided Fractionalized Long-Term Estate.**

(1) A real estate licensee who markets an undivided fractionalized long-term estate shall:

(a) obtain from the sponsor written disclosures pursuant to this Subsection (2) regarding the sponsor and each affiliate; and

(b) provide the disclosures to purchasers prior to closing so as to allow adequate review by the purchaser.

(2) Required disclosures.

(a) Disclosure as to the sponsor and the sponsor's affiliates, including the following:

(i) current certified financial statements;

(ii) current credit reports;

(iii) information concerning any bankruptcies or civil lawsuits;

(iv) proposed use of purchaser proceeds;

(v)(A) if applicable, financial statements of the master lease tenant, audited according to generally accepted accounting principles; and

(B) if the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, audited financial statements of the owners of that entity;

(vi) statement as to whether the sponsor is an affiliate of a master lease tenant; and

(vii) statement as to whether any affiliate of the sponsor is:

(A) a third-party service provider; or

(B) a master lease tenant.

(b) Disclosure as to the real property in which the undivided fractionalized long-term estate is offered, including the following:

(i) material information concerning any leases or subleases affecting the real property;

(ii) material information concerning any environmental issues affecting the real property;

(iii) a preliminary title report on the real property;

(iv) if available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;

(v) if applicable, rent rolls and operating history;

(vi) if applicable, loan documents;

(vii)(A) a tenants in common agreement; or

(B) any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;

(viii) third party reports acquired by the sponsor;

(ix) a narrative appraisal report that:

(A) is effective no more than six months prior to the date the offer of sale is made; and

(B) includes, at a minimum:

(I) pictures;

(II) type of construction;

(III) age of building; and

(IV) site information such as improvements, parking, cross easements, site and location maps;

(x) material information concerning the market conditions for the property class; and

(xi) material information concerning the demographics of the general market area.

(c) Disclosure as to the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered, including the following:

(i) contact information for any existing or recommended asset managers and property managers;

(ii) description of any relationship between:

(A) the asset managers and the sponsor; and

(B) the property managers and the sponsor; and

(iii) copies of any existing:

(A) asset management agreements; and

(B) property management agreements.

(d) Disclosure as to potential tax consequences, including the following:

(i) a statement that there might be tax consequences for a failure to close on the purchase;

(ii) a statement that there might be risks involved in the purchase; and

(iii) a statement advising purchasers to consult with tax advisors and other professionals for advice concerning these matters.

(3) The division and commission shall consider any offering of a fractionalized undivided long-term estate in real property that complies with the Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 203.506 to be in compliance with these rules.

**R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.**

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;

(b) obedience, which obligates the agent to obey all lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;

(f) holding safe and accounting for all money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;

(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:

(a) seller(s) the individual represents;

(b) buyer(s) the individual represents;

(c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);

(d) the owner of a property for which the individual will provide property management services; and

(e) a tenant whom the individual represents;

(3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:

(a) clearly explaining in writing to both parties:

(i) that each is entitled to be represented by a separate agent;

(ii) the type(s) of information that will be held confidential;

(iii) the type(s) of information that will be disclosed; and

(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;

(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

(i) undivided loyalty;

(ii) absolute confidentiality; and

(iii) full disclosure from the licensee; and

(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;

(4) when acting under a limited agency agreement:

(a) act as a neutral third party; and

(b) uphold the following fiduciary duties to both parties:

(i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;

(ii) reasonable care and diligence;

(iii) holding safe all money or property entrusted to the limited agent; and

(iv) any additional duties created by the agency agreement;

(5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;

(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;

(c) the licensee's agency relationship(s);

(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

(6) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;

(7) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:

(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and

(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;

(8) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

(9) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:

(a) in the currently approved Real Estate Purchase Contract; or

(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

(10) when executing a lease or rental agreement, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

(11) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:

(a) notify the listing brokerage that sub-agency is requested; and

(b) enter into a written agreement with the listing brokerage with which the seller has contracted:

(i) consenting to the sub-agency; and

(ii) defining the scope of the agency;

(c) obtain from the listing brokerage all available information about the property; and

(d) uphold the same fiduciary duties outlined in this Subsection (1);

(12) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

(13)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

(i) the principal broker's individual name; or

(ii) the principal broker's brokerage name; and

(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

(14) timely inform the licensee's principal broker or branch broker of real estate transactions in which:

(a) the licensee is involved as agent or principal;

(b) the licensee has received funds on behalf of the principal broker; or

(c) an offer has been written;

(15)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker;

(16)(a) in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306;

(17) use an approved addendum form to make a counteroffer or any other modification to a contract;

(18) in order to sign or initial a document on behalf of a principal in a sales transaction:

(a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;

(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(19) in order to sign or initial a document on behalf of a principal in a property management transaction:

(a) obtain prior written authorization executed by the principal which specifically identifies the actions that are authorized to be taken on behalf of the principal;

(b) retain in the file for the transaction a copy of the written authorization;

(c) sign as follows: "by (Licensee's Name), on behalf of Owner;" and

(d) initial as follows: "by (Licensee's initials), on behalf of Owner;"

(20) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(21) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(22) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased; and

(d) the approximate net proceeds the seller may reasonably expect to receive;

(23) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(24) as contemplated by Subsection 61-2f-401(19), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

#### **R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.**

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

(a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(b) could jeopardize the public health, safety, or welfare; or

(c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties

signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation to the division:

(a) in an application for license renewal; or

(b) in an investigation.

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

(a) is not disclosed to the lender; and

(b) if disclosed, might have a material effect on the terms or the granting of the loan;

(6) use or propose the use of a double contract;

(7) place a sign on real property without the written consent of the property owner;

(8) take a net listing;

(9) sell listed properties other than through the listing broker;

(10) subject a principal to paying a double commission without the principal's informed consent;

(11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(a) a licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(b) as to a property management transaction, a licensee may compensate an unlicensed employee or current tenant up to \$200 per lease for assistance in retaining an existing tenant or securing a new tenant;

(13) accept a referral fee from:

(a) a lender; or

(b) a mortgage broker;

(14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(a) mortgage loan originator, associate lending manager, or principal lending manager;

(b) appraiser or appraiser trainee;

(c) escrow agent; or

(d) provider of title services;

(15) act or attempt to act as a limited agent in any transaction in which:

(a) the licensee is a principal in the transaction; or

(b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

(16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(a) the boilerplate provisions of the Real Estate Purchase Contract; or

(b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(17) advertise or offer to sell or lease property without the written consent of:

(a) the owner of the property; and

(b) if the property is currently listed, the listing broker;

(18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(23);

(20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

(22) in a short sale, have the seller sign a document allowing the licensee to lien the property; or

(23) charge any fee that represents the difference between:  
 (a) the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or

(b) in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

**R162-2f-401c. Additional Provisions Applicable to Principal Brokers.**

(1) A principal broker shall:  
 (a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;

(b) provide to the person whom the principal broker represents in a real estate transaction:

(i) a detailed statement showing the current status of a transaction upon the earlier of:

(A) the expiration of 30 days after an offer has been made and accepted; or

(B) a buyer or seller making a demand for such statement; and

(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

(A) the principal broker;  
 (B) an associate broker or branch broker affiliated with the principal broker; or

(C) the sales agent who is:  
 (I) affiliated with the principal broker; and

(II) representing the principal in the transaction; and

(ii) ensure the principals in each closed real estate transaction receive copies of all documents executed in the transaction closing;

(d) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

(i) an identification of the property involved in the real estate transaction;

(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

(v) additional instructions at the discretion of the principal broker;

(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

(f) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:

(i) the principal broker for an entity; or

(ii) a branch broker;

(g) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;

(h) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;

(i)(i) except as provided in this Subsection (1)(i)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity; and

(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;

(iii) a principal broker is not required to comply with this Subsection (1)(i)(i) or (ii) if:

(A) the contract or other written agreement states that the money is to be:

(I) held for a specific length of time; or

(II) as to a real estate transaction, deposited upon acceptance by the seller; or

(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

(I) names the seller as payee; and

(II) is retained in the principal broker's file until closing;

(j)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate and property management transactions; and

(ii) be personally responsible at all times for deposits held in the principal broker's trust account;

(k)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and

(II) assign a unique identification to each property management client; and

(B) include the transaction number or client identification, as applicable, on:

(I) trust account deposit records; and

(II) trust account checks or other equivalent records evidencing the transfer of trust funds;

(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iii) maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:

(A) in separate files; or

(B) in a single file holding all such offers; and

(l) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection (1):

(i) actively supervise any such associate broker or branch broker; and

(ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.

(2) A principal broker shall not be deemed in violation of this Subsection (1)(f) where:

(a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;

(b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such

a violation;

(c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

(d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(e) the broker did not participate in the violation;

(f) the broker did not ratify the violation; and

(g) the broker did not attempt to avoid learning of the violation.

**R162-2f-401d. School and Provider Conduct.**

(1) Affirmative duties. A school's owner(s) and director(s) shall:

(a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;

(b)(i) provide instructors of prelicensing courses with the state-approved course outline; and

(ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;

(c) ensure that all instructors comply with Section R162-2f-401e.

(d) prior to accepting payment from a prospective student for a prelicensing education course:

(i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d);

(ii) obtain the student's signature on the criminal history disclosure; and

(iii) have the enrollee verify that an education waiver has not been obtained from the division;

(e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and

(ii) make the signed criminal history disclosures available for inspection by the division upon request;

(f) maintain for a minimum of three years after enrollment:

(i) the registration record of each student;

(ii) the attendance record of each student; and

(iii) any other prescribed information regarding the offering, including exam results, if any;

(g) ensure that course topics are taught only by:

(i) certified instructors; or

(ii) guest lecturers;

(h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and

(ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;

(i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;

(j) within ten days of teaching a course, upload course completion information for any student who:

(i) successfully completes the course; and

(ii) provides an accurate name or license number within seven business days of attending the course;

(k) substantiate, upon request by the division, any claims made in advertising; and

(l) include in all advertising materials the continuing education course certification number issued by the division.

(2) Prohibited conduct. A school may not:

(a) award continuing education credit for a course that has not been certified by the division prior to its being taught;

(b) award continuing education credit to any student who fails to:

(i) attend a minimum of 90% of the required class time; or

(ii) pass a prelicense course final examination;

(c) accept a student for a reduced number of hours without

first having a written statement from the division defining the exact number of hours the student must complete;

(d) allow a student to challenge by examination any course or part of a course in lieu of attendance;

(e) allow a course approved for traditional education to be:

(i) taught in a private residence; or

(ii) completed through home study;

(f) make a misrepresentation in advertising about any course of instruction;

(g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;

(h) make disparaging remarks about a competitor's services or methods of operation;

(i) attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;

(j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;

(k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;

(l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;

(m) obligate or require students to attend any event in which a brokerage solicits for agents;

(n) award more than eight credit hours per day per student;

(o) award credit for an online course to a student who fails to complete the course within one year of the registration date;

(p) advertise or market a continuing education course that has not been:

(i) approved by the division; and

(ii) issued a current continuing education course certification number; or

(q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

**R162-2f-401e. Instructor Conduct.**

(1) Affirmative duties. An instructor shall:

(a) adhere to the approved outline for any course taught;

(b) comply with a division request for information within ten business days of the date of the request; and

(c) maintain a professional demeanor in all interactions with students.

(2) Prohibited conduct. An instructor may not:

(a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(b) continue to teach any course after the course has expired and without renewing the course certification.

**R162-2f-401f. Approved Forms.**

The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

(1) August 27, 2008, Real Estate Purchase Contract;

(2) January 1, 1987, Uniform Real Estate Contract;

(3) October 1, 1983, All Inclusive Trust Deed;

(4) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(5) August 5, 2003, Addendum to Real Estate Purchase Contract;

(6) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;

(7) January 1, 1999, Buyer Financial Information Sheet;

(8) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(9) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(10) January 1, 1999, Lead-based Paint Addendum to Real

Estate Purchase Contract; and

(11) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

**R162-2f-401g. Use of Personal Assistants.**

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

(1) obtain the permission of the licensee's principal broker before employing the individual;

(2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:

(a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;

(b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;

(c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;

(d) placing brokerage signs on listed properties;

(e) having keys made for listed properties; and

(f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;

(3) compensate a personal assistant at a predetermined rate that is not:

(a) contingent upon the occurrence of real estate transactions; or

(b) determined through commission sharing or fee splitting; and

(4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

**R162-2f-401h. Requirements and Restrictions in Advertising.**

(1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records except where:

(a) a licensee advertises unlisted property in which the licensee has an ownership interest; and

(b) the advertisement identifies the licensee as "owner-agent" or "owner-broker."

(2) An advertisement that includes the name of an individual licensee shall also include the name of the licensee's brokerage in lettering that is at least one-half the size of the lettering identifying the individual licensee.

(3) An advertisement that includes a photograph of an individual who is not a licensee shall identify the individual's role in terms that make it clear that the individual is not licensed.

(4) An advertisement may not include artwork or text that states or implies that an individual has a position or status other than that of sales agent, associate broker, or principal broker affiliated with a brokerage.

(5) An advertising team, group, or other marketing entity that is not registered as a brokerage:

(a) shall, in all types of advertising, clearly:

(i) disclose that the team, group, or other marketing entity is not itself a brokerage; and

(ii) state the name of the registered brokerage with which

the property being advertised is listed;

(b) shall, in any printed advertising material, clearly and conspicuously identify, in lettering that is at least one-half the size of the largest lettering used in the advertisement, the name of the registered brokerage with which the property being advertised is listed; and

(c) may not advertise as an "owner-agent" or "owner-broker."

(6)(a) A written advertisement of a guaranteed sales plan shall include, in print at least one-fourth as large as the largest print in the advertisement:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(22).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

**R162-2f-401i. Standards for Real Estate Auctions.**

For auctions of real property in this state:

(1) the auctioneer or auction company shall:

(a) be licensed as a principal broker under Utah Code Title 61, Chapter 2f; or

(b) affiliate with a licensed principal broker for purposes of advertising and conducting all aspects of the auction;

(2) the auctioneer or auction company shall not advertise the services of the auctioneer or auction company directly to an owner of real property who is already subject to an agency agreement;

(3) if an auctioneer or auction company affiliates with a principal broker as provided in Utah Administrative Code R162-2f-401i(1)(b), the principal broker shall:

(a) ensure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions;

(b) ensure that advertising and promotional materials associated with an auction name the principal broker;

(c) attend and supervise the auction;

(d) ensure that any purchase agreement used at the auction is completed by an individual holding an active Utah real estate license and is filled out in compliance with Section 61-2f-306;

(e) ensure that any money deposited at the auction is placed in trust pursuant to Utah Administrative Code R162-2f-401c(1)(i); and

(f) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

**R162-2f-401j. Standards for Property Management.**

(1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling all duties related to supervision per Section 61-2f-401(12), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including this Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

(a) providing a prospective tenant with access to a rental

unit;

(b) providing secretarial, bookkeeping, maintenance, or rent collection services;

(c) quoting rent and lease terms as established or approved by the principal broker;

(d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

(e) serving or receiving legal notices;

(f) addressing tenant or neighbor complaints; and

(g) inspecting units.

(4) Within 30 days of the termination of a contract with a property owner for property management services, the principal broker shall deliver all trust money to the property owner, the property owner's designated agent, or other party as designated under the contract with the property owner.

#### **R162-2f-401k. Recordkeeping Requirements.**

A principal broker shall:

(1) maintain and safeguard the following records to the extent they relate to the business of a principal broker:

(a) all trust account records;

(b) any document submitted by a licensee affiliated with the principal broker to a lender or underwriter as part of a real estate transaction;

(c) any document signed by a seller or buyer with whom the principal broker or an affiliated licensee is required to have an agency agreement; and

(d) any document created or executed by a licensee over whom the principal broker has supervisory responsibility pursuant to Subsection R162-2f-401c(1)(f);

(2) maintain the records identified in Subsection R162-2f-401k(1):

(a)(i) physically:

(A) at the principal business location designated by the principal broker on division records; or

(B) where applicable, at a branch office as designated by the principal broker on division records; or

(ii) electronically, in a storage system that complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act; and

(b) for at least three calendar years following the year in which:

(i) an offer is rejected; or

(ii) the transaction either closes or fails;

(3) upon request of the division, make any record identified in Subsection R162-2f-401k(1) available for inspection and copying by the division;

(4) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained; and

(5) upon filing for brokerage bankruptcy, notify the division in writing of:

(a) the filing; and

(b) the current location of brokerage records.

#### **R162-2f-401l. Gifts and Inducements.**

(1) An inducement gift is permissible and is not an illegal sharing of commission if the principal broker or affiliated licensee offering the inducement gift to a buyer or a seller complies with the underwriting guidelines that apply to any loan in the transaction for which the inducement has been offered.

(2) A closing gift is permissible and is not an illegal sharing of commissions.

#### **R162-2f-402. Investigations.**

The investigative and enforcement activities of the division shall include the following:

(1) verifying information provided on new license

applications and applications for license renewal;

(2) evaluation and investigation of complaints;

(3) auditing licensees' business records, including trust account records;

(4) meeting with complainants, respondents, witnesses and attorneys;

(5) making recommendations for dismissal or prosecution;

(6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;

(7) working with the assistant attorney general and representatives of other state and federal agencies; and

(8) entering into proposed stipulations for presentation to the commission and the director.

#### **R162-2f-403a. Trust Accounts - General Provisions.**

(1) A principal broker shall:

(a)(i) if engaged in listing or selling real estate, maintain at least one real estate trust account in a bank or credit union located within the state of Utah; and

(ii) if engaged in property management, refer to Subsection R162-2f-403b(3);

(b) at the time a trust account is established, notify the division in writing of:

(i) the account number;

(ii) the address of the bank or credit union where the account is located; and

(iii) the type of activity for which the account is used.

(2) A trust account maintained by a principal broker shall be non-interest-bearing, unless:

(a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;

(b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;

(c) the person designated under this Subsection (2)(b):

(i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and

(ii) operates exclusively to provide grants to affordable housing programs in Utah; and

(d) the affordable housing program that is the recipient of the grant under this Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.

(3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.

(4) Records of deposits to a trust account shall include:

(a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(k);

(b) identification of payee and payor;

(c) amount of deposit;

(d) location of property subject to the transaction; and

(e) date and place of deposit.

(5) Any instrument by which funds are disbursed from a real estate or property management trust account shall include:

(a) the business name of the registered entity;

(b) the address of the registered entity;

(c) clear identification of the trust account from which the disbursement is made, including:

(i) account name; and

(ii) account number;

(iii) transaction number or unique client identification, as applicable, pursuant to Subsection R162-2f-401c(1)(k);

(iv) date of disbursement;

(v) clear identification of payee and payor;

(vi) amount disbursed;

(vii) notation identifying the purpose for disbursement;

and

(viii) check number, wire transfer number, or equivalent bank or credit union instrument identification.

(6) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Subsection R162-2f-401k.

(7) If both parties to a contract make a written claim to money held in a principal broker's trust fund and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

(a) interplead the funds into court and thereafter disburse:

(i) upon written authorization of the party who will not receive the funds; or

(ii) pursuant to the order of a court of competent jurisdiction; or

(b) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:

(i) no party has filed a civil suit arising out of the transaction; and

(ii) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(8) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

(9) Trust account reconciliation. For each real estate or property management trust account operated by a registered entity, the principal broker of the entity shall:

(a) maintain a date-sequential record of all deposits to and disbursements from the account, including or cross-referenced to the information specified in Subsection R162-2f-401c(1)(k);

(b) maintain a current, running total of the balance contained in the trust account;

(c)(i) maintain records sufficient to detail the final disposition of all funds associated with each transaction; and

(ii) ensure that each closed transaction balances to zero;

(d) reconcile the brokerage trust account records with the bank or credit union records at least monthly; and

(e) upon request, make all trust account records available to the division for auditing or investigation.

(10) The principal broker shall notify the division within 30 days if:

(a) the principal broker receives, from a bank or credit union in which the principal broker maintains a real estate or property management trust account, documentation to evidence that the trust account is out of balance; and

(b) the imbalance cannot be cured within the 30-day notification period.

#### **R162-2f-403b. Real Estate Trust Accounts.**

(1) A real estate trust account shall be used for the purpose of securing client funds:

(a) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;

(b) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and

(c) collected in the performance of property management duties, pursuant to this Subsection (3).

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into the real estate trust account more than \$500 of the principal broker's own funds.

(3)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish at least one property management trust account that is:

(i) separate from the real estate trust account; and

(ii) operated in accordance with Subsection R162-2f-403c.

(b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.

(4) Unless otherwise agreed pursuant to this Subsection (5)(b), a principal broker may not pay a commission from the real estate trust account without first:

(a) obtaining written authorization from the buyer and seller, through contract or otherwise;

(b) closing or otherwise terminating the transaction;

(c) delivering the settlement statement to the buyer and seller;

(d) ensuring that the buyer or seller whom the principal broker represents has been paid the amount due as determined by the settlement statement;

(e) making a record of each disbursement; and

(f) depositing funds withdrawn as the principal broker's commission into the principal broker's operating account prior to further disbursing the money.

(5) A principal broker may disburse funds from a real estate trust account only in accordance with:

(a) specific language in the Real Estate Purchase Contract authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(6) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.

(7) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:

(a) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or

(b) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

#### **R162-2f-403c. Property Management Trust Accounts.**

(1) As of January 1, 2014, a trust account that is used exclusively for property management purposes shall be used to secure the following:

(a) tenant security deposits;

(b) rents; and

(c) money tendered by a property owner as a reserve fund or for payment of unexpected expenses.

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into a property management trust account any funds belonging to the principal broker without:

(a) maintaining records to clearly identify the total amount belonging to the principal broker; or

(b) performing a monthly line-item reconciliation of all deposits and withdrawals of funds belonging to the principal broker.

(3) A principal broker may disburse funds from a property management trust account only in accordance with:

(a) specific language in the property management contract or tenant lease agreement, as applicable, authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(4) A principal broker who transfers funds from a property management trust account for any purpose shall maintain records to clearly evidence that:

(a) prior to making the transfer, the principal broker verified the money as belonging to the property owner for whose benefit, or on whose instruction, the funds are



transferred;

(b) any money transferred into an operating account as the principal broker's property management fee is earned according to the terms of the principal broker's contract with the property owner;

(c) any transfer for maintenance, repair, or similar purpose is:

(i) authorized according to the terms of the applicable property management contract, tenant lease agreement, or other instruction of the property owner; and

(ii) used strictly for the purpose for which the transfer is authorized, with any excess returned to the trust account.

**R162-2f-407. Administrative Proceedings.**

(1) An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(2) Other adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be designated as either formal or informal in the division's notice of agency action or notice of proceeding, as applicable.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.

(3) Hearings required. A hearing before the commission shall be held in a proceeding:

(a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2);

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing;

(c) appealing a division order denying or restricting a license; and

(d) when an application presents unusual circumstances, such that the division determines that the application should be heard by the commission.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in this Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection 407, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:

(i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and

(ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(5) Additional procedures for informal disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

(6) Formal adjudicative proceedings shall be conducted

pursuant to the Administrative Procedures Act and the rules promulgated by the Department of Commerce.

**R162-2f-501. Appendices.**

When calculating experience points from Tables 1 and 2, experience points are limited to points for those activities which require a real estate license and comply with R162-2f-401a. A minimum of one-half of the points in Tables 1 and 2 must derive from transactions of properties located in the state of Utah.

TABLE 1  
APPENDIX 1 - REAL ESTATE SALES TRANSACTIONS  
EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:

(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points

COMMERCIAL

(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points

TABLE 2  
APPENDIX 2 - LEASING TRANSACTIONS AND PROPERTY MANAGEMENT  
EXPERIENCE TABLE

RESIDENTIAL

(a) Each master agreement of 5 units or more	5 points
(b) Each unit leased	1.25 points
*(c) All other property management	0.25 pt/month

COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building

(a) Each master agreement of 5 units or more	5 points
(b) Each unit leased	1.25 points
*(c) All other property management	1 pt/month

\*When calculating experience points from Table 2, the total combined monthly experience credit claimed for "All other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker.

TABLE 3  
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

**KEY: real estate business, operational requirements, trust account records, notification requirements**

<b>February 23, 2015</b>	<b>61-2f-103(1)</b>
<b>Notice of Continuation August 12, 2015</b>	<b>61-2f-105</b>
	<b>61-2f-203(1)(e)</b>
	<b>61-2f-206(3)</b>
	<b>61-2f-206(4)(a)</b>
	<b>61-2f-306</b>
	<b>61-2f-307</b>

**R277. Education, Administration.****R277-404. Requirements for Assessments of Student Achievement.****R277-404-1. Authority and Purpose.**

(1) This rule is authorized by:  
 (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Sections 53A-1-603 through 53A-1-611, which direct the Board to adopt rules for the maintenance and administration of U-PASS;

(c) Subsection 53A-15-1403(9)(b), which requires the Board to adopt rules to establish a statewide procedure for excusing a student from taking certain assessments; and

(d) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is to:

(a) provide consistent definitions; and

(b) assign responsibilities and procedures for a Board developed and directed comprehensive assessment system for all students, as required by state and federal law.

**R277-404-2. Definitions.**

(1) "Benchmark reading assessment" means an assessment:

(a) determined by the Board for a student in grade 1 through 3; and

(b) administered to a student at the beginning, midpoint, and end of year.

(2)(a) "College readiness assessment" means an assessment adopted by the Board that includes a college admissions test that provides an assessment of language arts, mathematics, and science, that is most commonly used by local universities to assess student preparation for college.

(b) "College readiness assessment" may include:

(i) the Armed Services Vocational Aptitude Battery or ASVAB; and

(ii) a battery of assessments that is predictive of success in higher education.

(c) "College readiness assessment" includes the American College Testing exam or ACT.

(3) "English Learner" or "EL student" means a student who is learning in English as a second language.

(4) "English language proficiency assessment" means an assessment:

(a) designated by the Superintendent; and

(b) designed to measure the acquisition of the academic English language for an English Learner student.

(5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.

(6) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

(7) "Online writing assessment" means a Board-designated online assessment to measure writing performance for a student in grades 3 through 11.

(8) "Pre-post" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in academic proficiency that has occurred during the school year.

(9) "State required assessment" means an assessment described in Subsection 53A-15-1403(9)(a).

(10) "Student Assessment of Growth and Excellence" or "SAGE" means a computer adaptive assessment for:

(a) English language arts grades 3 through 11;

(b) mathematics:

(i) grades 3 through 8; and

(ii) Secondary I, II, and III; and

(c) science:

(i) grades 4 through 8;

(ii) earth science;

(iii) biology;

(iv) physics; and

(v) chemistry.

(11) "Section 504 accommodation plan" means a plan:

(a) required by Section 504 of the Rehabilitation Act of 1973; and

(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(12) "Summative adaptive assessment" means an assessment:

(a) administered upon completion of instruction to assess a student's achievement;

(b) administered online under the direct supervision of a licensed educator;

(c) designed to identify student achievement on the standards for the respective grade and course; and

(d) measure the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

(13) "Utah alternate assessment" means:

(a) an assessment instrument designated by the Superintendent for a student in special education with a disability so severe the student is not able to participate in the components of U-PASS even with an assessment accommodation or modification; and

(b) measures progress on the Utah core instructional goals and objectives in the student's IEP.

(14) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:

(a) an LEA and USOE to electronically exchange an individual detailed student record; and

(b) 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.

(15) "Utah Performance Assessment System for Students" or "U-PASS" means:

(a) a summative adaptive assessment of a student in grades 3 through 12 in basic skills courses;

(b) an online writing assessment in grades 3 through 11, as part of SAGE;

(c) a college readiness assessment; and

(d) summative assessment of a student in grade 3 to measure reading grade level using grade 3 SAGE English Language Arts.

**R277-404-3. Board Responsibilities.**

(1) The Board's comprehensive assessment system for all students in grades K-12 includes:

(a) a summative adaptive assessment in:

(i) English language arts for grades 3 through 11;

(ii) mathematics for grades 3 through 8;

(iii) secondary math 1, 2, and 3;;

(iv) science for grades 4 through 8; and

(v) earth systems, biology, physics and chemistry;

(b) an online writing assessment for grades 3 through 11;

(c) pre-post kindergarten assessment for a kindergarten student as determined by the LEA;

(d) one benchmark reading assessment approved by the Board for students in grades 1 through 3 and administered to students at the beginning, midpoint and end of year;

(e) grade 3 end of year summative reading assessment using grade 3 SAGE English Language Arts;

(f) Utah's alternate assessment, for an eligible student with

a disability;

- (g) an English language proficiency assessment;
- (h) National Assessment of Educational Progress (NAEP);
- (i) college readiness assessment for:
  - (i) grade 11 and optional college; and
  - (ii) career readiness assessment in grade 8 or 9 and 10, as determined by the LEA; and

(j) reporting by the Superintendent of U-PASS results.

(2) The report required by Subsection (1)(j) shall include:

(a) student performance based on information that is disaggregated with respect to race, ethnicity, gender, English proficiency, eligibility for special education services, and free or reduced price school lunch status;

(b) security features to maintain the integrity of the system, including statewide uniform assessment dates, assessment administration protocols, and training; and

(c) summative adaptive assessment results disseminated by the Superintendent to an LEA, parent, and other, as appropriate, consistent with FERPA.

(3) The Board shall provide specific rules, administrative guidelines, timelines, procedures, and assessment ethics training and requirements for all required assessments.

#### **R277-404-4. LEA Responsibilities.**

(1) An LEA shall develop a comprehensive assessment system plan to include the assessments described in Subsection R277-404-3(1).

(2) The plan shall, at a minimum, include:

(a) professional development for an educator to fully implement the assessment system;

(b) training for an educator and an appropriate paraprofessional in the requirements of assessment administration ethics;

(c) training for an educator and an appropriate paraprofessional to utilize assessment results effectively to inform instruction; and

(d) adequate oversight of test administration to ensure compliance with Section 53A-1-603 as follows:

(i) an LEA or online provider shall test all enrolled students unless a student has a written parental excuse under Subsection 53A-15-1403(9);

(ii) a student participating in the Statewide Online Education Program is assessed consistent with Section 53A-15-1210; and

(iii) a third party vendor or contractor may not administer or supervise U-PASS.

(3) An LEA shall make all policies and procedures consistent with the law, Board rules for standardized assessment administration, and the USOE Testing Ethics Policy, approved by the Board August 8, 2014, incorporated by reference, and located at USOE, 250 East 500 South, Salt Lake City, or online at <http://www.schools.utah.gov/assessment/Directors/Resources.aspx>.

(4) At least once each school year, an LEA shall provide professional development for all educators, administrators, and standardized assessment administrators concerning guidelines and procedures for standardized assessment administration, including educator responsibility for assessment security and proper professional practices.

(5) LEA assessment staff shall use the USOE Testing Ethics Policy in providing training for all assessment administrators and proctors.

(6) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.

#### **R277-404-5. School Responsibilities.**

(1) An LEA, school, or educator may not use a student's score on a state required assessment to determine:

(a) the student's academic grade, or a portion of the student's academic grade, for the appropriate course; or

(b) whether the student may advance to the next grade level.

(2) An LEA and school shall require an educator and assessment administrator and proctor to individually sign the Testing Ethics signature page provided by USOE acknowledging or assuring that the educator administers assessments consistent with ethics and protocol requirements.

(3) All educators and assessment administrators shall conduct assessment preparation, supervise assessment administration, provide assessment results, and complete error resolution.

(4) All educators and assessment administrators and proctors shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, Board rules, USOE Testing Ethics Policy, and state applications of federal requirements for funding.

(5) A student's IEP, EL, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments.

#### **R277-404-6. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.**

(1)(a) Parents are primarily responsible for their children's education and have the constitutional right to determine which aspects of public education, including assessment systems, in which their children participate.

(b) Parents may further exercise their inherent rights to exempt their children from a state required assessment without further consequence by an LEA.

(2) An LEA shall administer state required assessments to all students unless:

(a) the Utah alternate assessment is approved for specific students consistent with federal law and as specified in a student's IEP; or

(b) students are excused by a parent or guardian under Section 53A-15-1403(9) and as provided in this rule.

(3)(a) A parent may exercise the right to exempt their child from a state required assessment.

(b) Except as provided in Subsection (3)(c), upon exercising the right to exempt a child from a state required assessment under this provision, an LEA may not impose an adverse consequence on a child as a result of the exercise of rights under this provision.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53A-13-109.5 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53A-13-109.5(2), and may not graduate without successfully completing the requirements of Sections 53A-13-109.5 and R277-700-8.

(4)(a) In order to exercise the right to exempt a child from a state required assessment under this provision and insure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on USOE's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis and at least one day prior to beginning of the assessment.

(b) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA's specific form; and

(ii) the LEA's specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on USOE's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a state required assessment.

(6) School grading, teacher evaluations, and student progress reports or grades may not be negatively impacted by students excused from taking a state required assessment.

(7) Any assessment that is not a state required assessment, the administration of the assessments, and the consequence of taking or failing to take the assessments is governed by policy adopted by each LEA.

(8) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(9) An LEA may not reward a student for taking a state required assessment.

**R277-404-7. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.**

(1) An educator, test administrator or proctor, administrator, or school employee may not:

(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a standardized assessment prior to assessment administration;

(b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;

(c) change, alter, or amend any student online or paper response or any other standardized assessment material at any time in a way that alters the student's intended response;

(d) use any prior form of any standardized assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of USOE and an LEA administrator;

(e) violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA standardized assessment policy or procedure, or violate any procedure specified in USOE Testing Ethics Policy;

(f) fail to administer a state required assessment;

(g) fail to administer a state required assessment within the designated assessment window;

(h) submit falsified data;

(i) allow a student to copy, reproduce, or photograph an assessment item or component; or

(j) knowingly do anything that would affect the security, validity, or reliability of standardized assessment scores of any individual student, class, or school.

(2) A school employee shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or USOE.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-515.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Section 63G-2-305, until released by the

Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to USOE following testing, as required by the Superintendent.

(b) An individual educator or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

**R277-404-8. Time Periods for Assessment Administration.**

(1) An LEA educator or trained employee shall administer assessments required under R277-404-3 consistent with the following schedule:

(a) all summative adaptive assessments, an online writing assessment, and a Utah alternative assessment for elementary and secondary, English language arts, math, science, within the Superintendent's annually designated assessment windows;

(b) English language proficiency assessment:

(i) annually to all English Learner students identified as Level 1 Entering, Level 2 Beginning, Level 3 Developing, Level 4 Expanding, or enrolled for the first time in the LEA at any time during the school year to show student progress; and

(ii) submit materials to the Superintendent's identified scoring provider for scanning and scoring on a schedule defined by the Superintendent;

(c) pre-post kindergarten assessment for a kindergarten student as determined by the LEA during assessment windows determined by the LEA;

(d) one benchmark reading assessment determined by the Board for grade 1, grade 2, and grade 3 students in the beginning, midpoint, and end of the school year;

(e) grade 3 end of year summative reading assessment using grade 3 SAGE English Language Arts; and

(f) NAEP assessments determined and required annually by the United States Department of Education and administered to students as directed by United States Department of Education.

(2) An LEA educator or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(3)(a) An LEA that has an alternative schedule shall submit an annual testing plan to the Superintendent by September 1 annually.

(b) The plan shall:

(i) set dates for summative adaptive assessment administration for courses taught face to face or online;

(ii) set dates to assess students at the point in the course where students have had approximately the same amount of instructional time as students on a traditional full year schedule; and

(iii) provide a course level assessment schedule to the Superintendent before instruction begins for the course.

**R277-404-9. Data Exchanges.**

(1) The USOE IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each assessment.

(5) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

(6) Consistent with Utah law, the Superintendent shall

return assessment results from all required assessments to the school before the end of the school year.

**KEY: assessment, student achievement  
December 8, 2015**

**Notice of Continuation September 16, 2015 through 53A-1-611  
53A-1-401(3)**

**R277. Education, Administration.****R277-497. School Grading System.****R277-497-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Section 53A-1-1113, which directs the Board to adopt rules to implement a school grading system;

(c) Section 53A-1-1104, which authorizes the Board to make a rule to establish an accountability plan for an alternative school or special needs school that the Board has exempted from school grading; and

(d) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is to provide consistent definitions, standards, and procedures for LEAs to report school data through a school grading system.

**R277-497-2. Definitions.**

(1) "Alternative school" means the same as that term is defined in Section 53A-1-1102.

(2) "Special needs school" means a school that only enrolls a student that:

(a) has at least one of the following disabilities:

(i) an intellectual disability;

(ii) a hearing impairment or deafness;

(iii) a speech or language impairment;

(iv) a visual impairment, including blindness;

(v) deafblindness;

(vi) an emotional disturbance;

(vii) an orthopedic impairment;

(viii) autism;

(ix) developmental delay;

(x) traumatic brain injury;

(xi) other health impairment;

(xii) multiple disabilities; or

(xiii) specific learning disabilities; and

(b) has been determined to need placement in a special school by an IEP team.

**R277-497-3. Board Responsibilities.**

(1) The Board may not count a student who does not participate in required testing under Section 53A-1-603 due to parent excuse provisions of Subsection 53A-15-1403(9) and Section R277-404-6 in determining the participation rate for purposes of school grades.

(2) The Board and LEAs shall take necessary actions within their authority to satisfy Subsection 53A-15-1403(9)(b).

(3) The Superintendent shall calculate student growth targets by determining scale scores set at the 40th percentile for each student as compared to the student's academic peers with similar end of level results.

**R277-497-4. LEA Responsibilities.**

(1) An LEA shall provide accurate and timely data as required under Rule R277-484 to allow for the development of the school reports.

(2) An LEA shall use the school reports as a communication tool to inform parents and the community about school performance.

(3) An LEA shall ensure that the school reports are available for all parents.

**R277-497-5. School Responsibilities.**

(1) A school shall provide data for the school report as provided in Rule R277-484.

(2) A school shall cooperate with the Board and LEAs to ensure that the school report is available for all parents.

**R277-497-6. Exemption from School Grading.**

(1)(a) As authorized by Section 53A-1-1104, an alternative school or a special needs school may submit a request for an exemption from school grading for the next three school years to the Board by July 1.

(b) The request shall demonstrate that:

(i) the school meets the definition of an alternative school or a special needs school;

(ii) the school has the approval of:

(A) the school's LEA governing board; or

(B) if the school is the Utah Schools for the Deaf and the Blind, the USDB advisory committee; and

(iii) if the school has received an exemption for a previous school year, the school has timely submitted to the Superintendent all information necessary for the Board to evaluate the school as required by Section 53A-1-1104.

(2)(a) The Board shall exempt a school from school grading if the school meets the requirements of Subsection (1).

(b) Except as provided by Subsection (2)(c), an exemption from school grading is valid for three school years.

(c) The Board may revoke an exemption if a school fails to timely submit to the Superintendent all information necessary for the Board to annually evaluate the school in accordance with the accountability plan.

**R277-497-7. Accountability Plan -- General Provisions.**

(1)(a) This rule incorporates by reference the Guide to Utah's Comprehensive Accountability System for Alternative Schools - June 6, 2014, which describes the accountability plan required by Section 53A-1-1104, with the exceptions for a special needs school described in Section R277-497-8.

(b) The Superintendent shall annually evaluate a school in accordance with the accountability plan by calculating a school's composite score, which has a maximum value of 1500, by summing the school's weighted indicator scores.

(2) The accountability plan consists of five indicators weighted as follows:

(a) growth, which measures student academic progress based on a school's median student growth percentile for all students and below proficient students, is 20% with a maximum score of 300;

(b) attendance, which is the higher of a school's attendance rate in the current year or improvement in cohort attendance rate from the previous year, is 25% with a maximum score of 375;

(c) credit earning, which measures the degree to which a student enrolled in the current year is successfully completing courses in which the student is enrolled or is making improvement in cohort credit earning rate from the previous year, is 25% with a maximum score of 375;

(d) attainment, which measures the extent to which a student successfully completes or makes substantial progress toward completion of meaningful educational goals, is 20% with a maximum score of 300; and

(e) school climate, which measures whether a school is collecting data to evaluate school climate and using results to inform efforts to improve climate, is ten percent with a maximum score of 150.

(3) The Superintendent shall assign the scores based on the rubrics established in the guide.

**R277-497-8. Accountability Plan Exceptions.**

(1) At the request of a special needs school, the Superintendent may exempt a student from the attendance indicator score calculation if the student has a documented medical condition that prevents the student from attending 160 days of school.

(2) In accordance with a Section 53A-1-111, a student with a disability may take an alternative assessment to determine the student's growth instead of the Student Assessment of

Growth and Excellence.

(3) If required by Section R277-410-5, a special needs school shall report on the school's progress on the school's accreditation improvement plan in the School Snapshot section of the school's report card published by the Superintendent under Subsection 53A-1-1104(5)(b)(ii).

**KEY: school reports, school grading accountability**

**February 8, 2016**

**Notice of Continuation August 13, 2015**

**Art X, Sec 3**

**53A-1-1104**

**53A-1-1113**

**53A-1-401(3)**



**R277. Education Administration.****R277-716. Alternative Language Services for Utah Students.****R277-716-1. Definitions.**

A. "Alternative language program" means a research-based language acquisition instructional service model used to achieve English proficiency and academic progress of identified students.

B. "Alternative language services (ALS)" means language services designed to meet the education needs of all language minority students so that students are able to participate effectively in the regular instruction program.

C. "Annual measurable achievement objectives (AMAOs)" means English Language Proficiency Performance Targets established by the USOE consistent with NCLB Title III requirements for public school students who are receiving language acquisition services in the state of Utah as required by Title III, Section 3122.

D. "Approved language acquisition instructional model" means methods of ALS instruction that are evidence-based and recommended by the U.S. Department of Education and the USOE.

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

F. "Consolidated Utah Student Achievement Plan" means the application for federal funds authorized under ESEA, and other federal sources submitted annually to the Utah State Office of Education.

G. "English Language Learner/Limited English Proficient (ELL/LEP)" means an individual:

(1) who has sufficient difficulty speaking, reading and writing or understanding the English language and whose difficulties may deny such individual the opportunity to learn successfully in classrooms where the language of instruction is English or which may deny the individual the opportunity to participate fully in society; or

(2) who was not born in the United States or whose native language is a language other than English and who comes from an environment where a language other than English is dominant; or

(3) who is an American Indian or Alaskan native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency.

H. "IEP" means Individualized Education Program for eligible students with disabilities under the Individuals with Disabilities Education Act of 2004.

I. "Immigrant children and youth" for purposes of this rule means individuals who:

(1) are ages 3 through 21;

(2) were born outside of the United States; and

(3) have not been attending one or more schools in any one or more states of the United States for more than 3 full academic years.

J. "Instructional Materials Commission" means a Commission appointed by the Board to evaluate instructional materials for recommendation by the Board consistent with Section 53A-14-101.

K. "Language acquisition instructional program" means an instructional program for students for purpose of developing and attaining English proficiency, while meeting state academic content and achievement standards.

L. "Mountain West Consortium" means a committee consisting of 10 Western state education agencies formed to develop a multi-state English proficiency test.

M. "State Approved Endorsement Program (SAEP)" means a professional development plan on which a licensed Utah educator is working to obtain an endorsement.

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

**R277-716-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by No Child Left Behind Title III Language Instruction for Limited English Proficient and Immigrant Students, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purposes of this rule are:

(1) to address the requirements of Title VI and implementing regulations and case law;

(2) to clearly define the respective responsibilities of the Board and local boards of education:

(a) in identifying ELL/LEP students who are currently enrolled in Utah schools;

(b) in providing consistent and appropriate services to identified students; and

(3) in order to meet NCLB requirements, to meet NCLB funding eligibility requirements and to appropriately distribute ELL/LEP funds to school districts/charter schools with adequate policies.

**R277-716-3. State Board of Education Responsibilities.**

A. The Board shall make available an identification and placement procedure model to local school boards to provide language acquisition services for LEP/ELL students.

B. The Board shall develop and require all school districts/charter schools to use the statewide annual assessment to measure growth and progress in listening, speaking, reading, and writing and comprehension based on the Title III AMAOs for English language acquisition. For the 2005-2006 school year, the Utah Academic Language Proficiency Assessment (UALPA) shall be administered between January 1 and May 1, 2006. Each year thereafter, the testing window shall be open throughout the school year. School districts may determine restricted testing dates within the school year.

C. The Board shall apply a formula and distribute funds to local boards for identification and services to ELL/LEP students and their families.

(1) The formula shall provide an amount based upon eligible students and available funds, to be distributed to all eligible school districts/charter schools and consortia consistent with Title III requirements.

(2) The formula shall provide for an additional amount to qualifying school districts/charter schools based on numbers of immigrant children and youth.

D. The Board shall make available to school districts/charter schools models and accountability measures in providing ALS services to students. School districts/charter schools shall use Board-identified models or models based upon educational research.

E. The Board shall require school districts/charter schools that receive NCLB funds under this rule to:

(1) provide a budget as part of the Consolidated Utah Student Achievement Plan data on student achievement;

(2) provide the number of students served with Title III funds;

(3) provide assurances of services or a program used to serve students; school districts/charter schools shall maintain documentation of services or program;

(4) provide assurances of required parent notification; school districts/charter schools shall maintain documentation of parent notification;

(5) provide in a biennial report a summary of the school district's/charter school's progress under R277-716-3G(1) over a two year period in addition to the annual Consolidated Utah Student Achievement Plan information.

F. The Board shall provide timelines to school districts for meeting Title III requirements.

G. The Board shall assist and provide training to school

districts/charter schools in development of ALS and Title III services to students who do not meet prescribed English proficiency AMAOs.

H. Monitoring: the USOE shall remind school districts/charter schools annually in November that school districts/charter schools shall maintain:

- (1) an ALS budget plan;
- (2) a plan for delivering student instruction;
- (3) ALS assessments to date;
- (4) a sample of parent notification required under R277-716-4F; and
- (5) documentation or evidence of progress of required Title III AMAOs.

I. USOE staff shall make on-site visits to all funded ALS programs within every five year period beginning with 2006.

J. USOE staff shall provide technical assistance during on-site visits and as the USOE deems necessary.

#### **R277-716-4. Local Board of Education Responsibilities.**

A. A local board of education that receives funds under Title III of NCLB shall assure as part of the Consolidated Utah Student Achievement Plan that the local board has a written plan that:

- (1) includes an ELL/LEP student find process, including a home language survey and a language proficiency for program placement, that is implemented with student registration;
- (2) uses a valid and reliable assessment of proficiency in listening, speaking, reading, writing, and comprehension of English of identified ELL/LEP students;
- (3) provides language acquisition instructional services based on the Utah English Language Proficiency Standards approved by the Board on September 1, 2005;
- (4) establishes student exit criteria from ALS programs or services;
- (5) includes the ELL/LEP student count, by classification, prior to July 1 of each year.

B. Following funding, a school district/charter school shall:

- (1) determine what type of Title III ALS services are available and appropriate for each student identified in need of ALS services. Examples include dual immersion, ESL content-based, or sheltered instruction;
- (2) implement an approved language acquisition instructional program designed to achieve English proficiency and academic progress of identified students;
- (3) ensure that all identified ELL/LEP students receive English language development services, consistent with R277-716-4A(3);
- (4) provide adequate staff development to assist ELL/LEP teachers and staff in meeting AMAOs;
- (5) provide necessary staff, curricular materials approved by the Instructional Materials Commission consistent with R277-469, and facilities for adequate and effective training;

C. If school districts/charter schools do not meet AMAOs, they shall develop and implement improvement plans to satisfy AMAOs.

D. Following evaluation of student achievement and services, a school district/charter school shall:

- (1) analyze results and determine the programs' success or failure; and
- (2) modify a program or services that are not effective in meeting the state AMAOs.

E. A school district/charter school shall have a policy to identify and serve students who qualify for services under IDEA, including:

- (1) implementing procedures and training consistent with federal regulations and state special education rules that ensure ELL/LEP students are not misidentified as students with disabilities due to their inability to speak and understand

English;

(2) reviewing the assessment results of students' language proficiency in English and other language prior to initiating evaluation activities, including selecting additional assessment tools;

(3) conducting assessments for IDEA eligibility determination and educational programming in students' native language when appropriate;

(4) using nonverbal assessment tools when appropriate;

(5) ensuring that accurate information regarding students' language proficiency in English and other language(s) is considered in evaluating assessment results;

(6) considering results from assessments administered both in English and in the students' home language; and

(7) ensuring that all required written notices and communications with parents who are not proficient in English are provided in the parents' preferred language to the extent practicable, including utilizing interpretation services when appropriate; and

(8) coordinating the language acquisition services and special education and related services to ensure that the IEP is implemented as written.

F. A school district/charter school shall also provide information and training to staff that limited English proficiency is not a disability; if there is evidence that students with limited English proficiency have disabilities, they shall be referred for possible evaluation for eligibility under IDEA.

G. Parent involvement and notification:

(1) Each school district/charter school shall notify parents who are not proficient in English of school district/charter school required activities. Schools shall provide information about optional school activities in the parents' preferred language to the extent practicable.

(2) School districts/charter schools shall provide interpretation and translation services for parents at registration, IEP meetings, SEOP meetings, parent-teacher conferences and student disciplinary meetings.

(3) School districts/charter schools shall provide annual notice to parents of students placed in language acquisition programs at the beginning of the school year or no later than 30 days after identification. If a child has been identified as requiring ALS services after the school year has started, parent notification shall take place within 14 days of the student's identification and placement. The required notice shall include:

(a) the student's level of English proficiency, how such level was assessed, and the status of the student's academic achievement;

(b) the methods of instruction proposed to increase language acquisition, including using both the student's native language and English if necessary;

(c) specifically, how the methods of instruction will help the child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation;

(d) the specific exit requirements for the program including:

(i) the expected rate of transition from the program into classrooms that are not tailored for LEP students and

(ii) the expected graduation from secondary school(s) if funds appropriated consistent with this rule are used for secondary school students.

(4) School districts/charter schools shall provide notice to parent(s) of ELL/LEP students in addition to other required parent notification if the school district/school fails to meet AMAOs. Notice shall be provided within 30 days of the school district's/charter school's receipt of the annual State Title III Accountability Report from the USOE.

#### **R277-716-5. Teacher Qualifications.**

A. Utah educators who are assigned to provide instruction

in language acquisition programs shall comply with the State ESL Endorsement requirements provided in R277-520.

B. Teachers whose primary assignment is to provide English language instruction to ELL students shall have an ESL or ESL/Bilingual endorsement consistent with the assignment.

**R277-716-6. Miscellaneous Provisions.**

A. School districts/charter schools that generate less than \$10,000 from their ELL/LEP student count, are encouraged to form a consortium with other similar school districts/charter schools.

(1) The consortium shall designate a fiscal agent and shall submit all budget and reporting information from all of the member school districts/charter schools of the consortium.

(2) Each member of the consortium shall submit plans and materials to the fiscal agent of the consortium for final reporting submission to the USOE.

(3) The consortium fiscal agent assumes all responsibility of a local board under R277-716-4.

B. No school district, charter school or consortium may withhold more than two percent of NCLB Title III funding for administrative costs in serving ELL/LEP students.

**KEY: alternative language services**

**April 3, 2006**

**Notice of Continuation February 16, 2016**

**Art X Sec 3**

**53A-1-401(3)**

**R277. Education, Administration.****R277-726. Statewide Online Education Program.****R277-726-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Section 53A-15-1210, which requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses;

(c) Section 53A-15-1213, which requires the Board to make rules that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and

(d) Subsection 53A-1-401(3), which permits the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is to:

(a) define necessary terms;

(b) provide and describe a program registration agreement; and

(c) provide other requirements for an LEA, USOE, a parent and a student, and a provider for program implementation and accountability.

**R277-726-2. Definitions.**

(1) "Actively participates" means the student actively participates as defined by the provider.

(2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.

(3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using USOE provided Statewide Online Education Program form.

(b) Except as provided in Subsection 53A-15-1208(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.

(4) "Eligible student" means a student enrolled in grades 9-12 in a public school, but does not include a student enrolled in an adult education program.

(5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection (1).

(6)(a) "Executed CCA" means a CCA that has been signed by all parties and received by USOE.

(b) Following enrollment confirmation and participation, USOE directs funds to the provider, consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.

(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(8) "Online course" means a course of instruction offered through the Statewide Online Education Program.

(9) "Online course payment" means the amount withheld from a student's primary LEA and disbursed to the designated provider following satisfaction of the requirements of the law, and as directed in Section 53A-15-1207.

(10) "Online course provider" or "provider" means:

(a) a school district school;

(b) a charter school;

(c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or

(d) a program of an institution of higher education described in Subsection 53A-15-1205(3).

(11) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program.

(12) "Primary school of enrollment" means:

(a) a student's school of record; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(13) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

(14) "Statewide assessment" means a test or assessment required under Rule R277-404.

(15) "Statewide Online Education Program" or "program" means courses offered to students under Title 53A, Chapter 15, Part 12, Statewide Online Education Program Act.

(16) "USOE course code" means a code for a designated subject matter course assigned by the Superintendent.

(17) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or

(c) within 20 calendar days after the start date of the second .5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

**R277-726-3. Course Credit Acknowledgment (CCA) Process.**

(1) A student, a student's parent, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements;

(ii) the student's SEOP;

(iii) the student's IEP;

(iv) the student's Section 504 plan; or

(v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) A provider-initiated CCA may be sent directly to the Superintendent if the course is consistent with the student's SEOP.

(b) The primary school of enrollment is not required to meet with the student or parent.

(c) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

**R277-726-4. Eligible Student and Parent Rights and Responsibilities.**

(1)(a) An eligible student may register for program credits consistent with Section 53A-15-1204.

(b) Notwithstanding Subsection (1)(a), a student's primary LEA of enrollment or the Board may allow an eligible student to enroll in additional online courses consistent with Section 53A-15-1204 with documentation from the LEA.

(2) A student enrolled in a program course may earn no more credits in a year than the number of credits a student may earn by taking a full course load during the regular school day in the student's primary school of enrollment.

(3) An eligible student may register for more than the

maximum number of credits described in Subsection 53A-15-1204(2) if:

(a) the student's SEOP indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and

(b) the student's schedule demonstrates progress toward early graduation.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53A-15-1206.

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the high school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

#### **R277-726-5. LEA Requirements and Responsibilities.**

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA form, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

- (a) in registration materials;
- (b) on the LEA's website; and
- (c) on the school's website.

(4) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.

#### **R277-726-6. Superintendent Requirements and Responsibilities.**

(1) The Superintendent shall develop and provide a website for the program that provides information required under Section 53A-15-1212 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer statewide assessments consistent with Rule R277-404 for identified courses using LEA-adopted and state-approved assessments.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsections 53A-15-1006(2) and 53A-15-1208(3)(d).

(b) Course load standards may differ based on subject matter and differing accreditation standards.

(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to the Government Records Access and Management Act, (GRAMA).

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection 53A-15-1206(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53A, Chapter 15, Part 12, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

#### **R277-726-7. Provider Requirements and Responsibilities.**

(1)(a) A provider shall administer statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section 53A-15-1210 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for all statewide assessments.

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours in order to facilitate parent information.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

- (a) consistency with course standards;
- (b) criminal background checks for provider employees;
- (c) documentation of student enrollment and participation;

and

- (d) compliance with:
  - (i) the IDEA;
  - (ii) Section 504; and
  - (iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

- (a) Board procedures;
- (b) Board timelines; and
- (c) Sections 53A-15-1206, 53A-15-1206.5, 53A-15-1207, and 53A-15-1208.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) post fees on the provider website; and

(iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including protecting the confidentiality of a student's records and providing a parent and an eligible student access to records.

(7) Except as provided in Subsection R277-726-9, a provider shall submit a student's credit and grade to the Superintendent, primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider seeks to suspend a student from an online course for disciplinary reasons, the provider is responsible for all student due process procedures, including the IDEA and Section 504 of the Rehabilitation Act of 1973.

(b) A provider shall notify the Superintendent of a student's withdrawal, if the student is suspended for more than 10 days.

(10)(a) A provider shall provide to the Superintendent a list of course options using USOE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings in January and August annually.

(11) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(12) A provider shall provide all records maintained as part of a public online school or program, including:

(a) financial and enrollment records; and

(b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(13) A provider shall maintain documentation of student work, including dates of submission, for program audit purposes.

(14) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(15) A provider shall inform a student and the student's parent of expectations for active participation in course work.

(16) An LEA may participate in the program as a provider by offering a school or program to a Utah student in grades 9-12 who is not a resident student of the LEA consistent with Section 53A-15-1205(2).

(17) A program school or program shall:

(a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Section 53A-6-110;

(c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section 53A-12-103 and Rule R277-

407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99; and

(ii) Rule R277-487; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with the provisions of Rules R277-700 and R277-404.

(18) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only licensed Utah educators as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of Sections 53A-15-1503 and 53A-15-1504 prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-510, Educator Licensing - Highly Qualified Assignment;

(e) shall agree to administer and have the capacity to carry out statewide assessments, including proctoring statewide assessments, consistent with Section 53A-15-1210(2) and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53A-15-1206 and 53A-15-1206.5.

(19) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, and other additional data consistent with Board directives and procedures and as requested.

(20) A provider shall post all required information online on the provider's individual website including required assessment and accountability information.

#### **R277-726-8. Services to Students with Disabilities Participating in the Program.**

(1)(a) If a student requests services related to a Section 504 accommodation under the Americans with Disabilities Act, a provider shall:

(i) except as provided in Subsection (1)(b), prepare a Section 504 plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student described in Subsection (1)(a) to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (2)(a)(i).

(3) If a home or private school student participating in the program qualifies to receive special education services under the IDEA, the home or private school student:

(a) may waive the student's right to receive the special education services; or

(b) subject to the requirements of Subsection (4), enroll in the home or private school student's resident school for the purpose of receiving special education services.

(4) If a home or private school student requests to receive special education services as described in Subsection (3)(b):

(a) the home or private school student's resident school shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (4)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) claim the student in the resident school's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (4)(a)(i).

**R277-726-9. Other Information.**

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

**KEY: statewide online education program  
February 8, 2016  
Notice of Continuation December 15, 2015**

**Art X Sec 3  
53A-15-1210  
53A-15-1213  
53A-1-401(3)**

**R277. Education, Administration.****R277-920. Implementation of the School Turnaround and Leadership Development Act.****R277-920-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities; and
  - (c) Title 53A, Chapter 1, Part 12, School Turnaround and Leadership Development Act, which requires the Board to make rules to establish:
    - (i) outcome-based measures to designate a low performing school;
    - (ii) an appeal process for the denial of a school turnaround plan;
    - (iii) consequences for a low performing school; and
    - (iv) eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development Program.
- (2) The purpose of this rule is to implement and administer the School Turnaround and Leadership Development Act.

**R277-920-2. Definitions.**

- (1) "Appeal committee" means the committee established by Section R277-920-5.
- (2) "Committee" means a school turnaround committee established in accordance with Subsection 53A-1-1204(1) or 53A-1-1205(4).
- (3) "Eligible school" means the same as that term is defined in Section 53A-1-1208.
- (4) "Low performing school" means a school:
- (a) in the lowest performing:
    - (i) 3% of the high schools statewide according to the percentage of possible points earned under the school grading system; and
    - (ii) 3% of the elementary, middle, and junior high schools statewide according to the percentage of possible points earned under the school grading system; and
  - (b) identified by another measure identified by the Board.
- (5) "Plan" means a school turnaround plan described in Subsection 53A-1-1204(3).
- (6) "School improvement grant" means a Title I grant under the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6303(g).
- (7) "School leader" means the same as that term is defined in Section 53A-1-1209.
- (8) "School turnaround program" means the school turnaround program described in:
- (a) Sections 53A-1-1203 through 53A-1-1207; and
  - (b) Sections R277-920-3 through R277-920-7.

**R277-920-3. Superintendent's Designation of Low Performing Schools and Waiver Authority.**

- (1) The Superintendent may issue a waiver and exclude a low performing school from participating in the school turnaround program if:
- (a) the low performing school:
    - (i) has been designated a priority school by the Superintendent;
    - (ii) received school improvement grant money for the school year immediately following the school year for which the school is being graded; and
    - (iii) is already working with a turnaround expert through the school improvement grant; or
  - (b) the low performing school is in the school's first three years of operation.
- (2) If the Superintendent excludes a low performing school

from the school turnaround program as described in Subsection (1), the Superintendent shall designate additional schools, outside of the lowest performing 3% of schools statewide according to the percentage of possible points earned under the school grading system, until the school turnaround program includes at least 3% of the total public schools statewide.

(3) When selecting an additional school described in Subsection (2), the Superintendent shall include the next lowest performing schools according to the percentage of possible points earned under the school grading system.

**R277-920-4. School Turnaround Plan Submission and Approval Process.**

- (1) In addition to the requirements described in Subsection 53A-1-1204(3), a plan shall include at least the following:
- (a) a requirement that the school leaders of the low performing school participate in the School Leadership Development Program described in Section 53A-1-1209 and Section R277-920-8;
  - (b) a thorough analysis of the root cause of the low performing school's low performance;
  - (c) a specific and detailed plan to address the root cause of the low performing school's low performance;
  - (d) if the low performing school is a district school, a request from the local school board or district superintendent for:
    - (i) additional resources;
    - (ii) personnel; or
    - (iii) exemptions from district policy that may be contributing to the low performance of the district school; and

(e) a plan for management of school personnel, including:

- (i) recruitment of an educator or school leader; and
- (ii) professional development for an educator or school leader.

(2)(a) A local school board or charter school governing board may approve or deny a plan in whole or in part, if the part of the plan the board denies is severable from the part of the plan the board approves.

(b) A local school board or charter school governing board shall give a reason for a denial of each part of a plan.

(3) A local school board or charter school governing board shall submit a plan in accordance with Subsection 53A-1-1204(5)(b) or 53A-1-1205(7)(b) to the Superintendent.

(4)(a) In accordance with Subsection 53A-1-1206(4), the Superintendent shall review and approve or deny a plan in whole or in part, if the part of the plan the Superintendent denies is severable from the part of the plan the Superintendent approves.

(b) The Superintendent shall give a reason for a denial of each part of a plan.

**R277-920-5. Appeal Process for Denial of a School Turnaround Plan.**

(1) A committee, local school board, or charter school governing board may appeal the denial of a plan, in whole or in part, by following the procedures and requirements of this section.

- (2) An appeal authorized by this rule:
- (a) is an informal adjudicative proceeding under Section 63G-4-203; and
  - (b) shall be resolved by the date specified in Subsection 53A-1-1206(5)(b).

(3)(a) A principal, on behalf of a committee, may request that the local school board or the charter school governing board reconsider the denial of a plan:

- (i) by electronically filing the request:
  - (A) with the chair of the local school board or the charter school governing board; and
  - (B) on a form provided on the USOE website; and



(ii) within 5 calendar days of the denial.

(b) The reconsideration request may include a modification to the plan if the committee approves the modification.

(c) The local school board or the charter school governing board shall respond to the request within 10 calendar days by:

- (i) refusing to reconsider its action;
- (ii) approving a plan, in whole or in part; or
- (iii) denying a plan modification.

(d) The principal may appeal the denial of a plan under this Subsection (3):

(i) by electronically filing an appeal with the Superintendent on a form provided on the USOE website; and

(ii) within 5 calendar days of the denial.

(e) An appeal filed under this subsection shall be resolved in accordance with Subsections (5) and (6).

(4) A district superintendent, on behalf of a local school board, or a charter school governing board chair, on behalf of a charter school governing board, may appeal the Superintendent's denial of a plan:

(a) by electronically filing an appeal with the Superintendent on a form provided on the USOE website; and

(b) within 5 calendar days of the denial.

(5)(a) At least three members of a Board committee, appointed by the Board as the appeal committee, shall review the written appeal.

(b) The appeal committee may ask the principal, district superintendent, local school board chair, or charter school governing board chair to:

- (i) provide additional written information; or
- (ii) appear personally and provide information.

(c) The appeal committee shall make a written recommendation within 5 business days of receipt of the appeal request to the Board to accept, modify, or reject the plan and give a reason for the recommendation.

(6) The Board may accept or reject the appeal committee's recommendation and the Board's decision is the final administrative action.

#### **R277-920-6. Consequences for a Low Performing School.**

(1) The Board may impose a consequence described in this section if a low performing school does not improve the school's grade one letter grade or better within the time described in Subsection 53A-1-1207(3).

(2) The Board may restructure a low performing district school by taking over the low performing district school, or by other means as the Board deems appropriate.

(3) The Board may restructure a low performing charter school by taking over the low performing charter school, or by:

- (a) closing the low performing charter school; or
- (b) other means as the Board deems appropriate.

#### **R277-920-7. Hearing and Procedure Requirements Related to the Board's Imposition of a Consequences for Low Performing Schools.**

On or before December 1, 2016, the Superintendent shall make recommendations to the Board for changes to this rule regarding hearing and procedure requirements related to the Board's imposition of a consequence as described in Section R277-920-6.

#### **R277-920-8. School Leadership Development Program.**

(1) A school leader other than a school leader from a low performing school may apply to participate in the School Leadership Development Program if the school leader:

(a) is assigned to a priority school as designated by the Superintendent; or

(b) is nominated by the school leader's district superintendent or charter school governing board to participate.

(2) A school leader who meets the requirements of Subsection (1) may apply to participate in the School Leadership Development Program by electronically submitting an application to the Superintendent on a form provided on the USOE website by the date specified on the USOE website.

(3)(a) The Superintendent shall select a school leader to participate in the School Leadership Development Program based on the following selection criteria:

(i) first priority is given to a school leader who is assigned to a low performing school;

(ii) second priority is given to a school leader who is assigned to a priority school as designated by Superintendent; and

(iii) third priority is given to a school leader who is nominated by the school leader's district superintendent or charter school governing board.

(b) Notwithstanding Subsection (3)(a), the Superintendent may give priority to a school leader who has not received prior leadership training before selecting a school leader who has received prior leadership training.

(4)(a) In consultation with the Superintendent and the local school board chair, the district superintendent of a low performing school shall select a district administrator to participate in the School Leadership Development Program to:

(i) support the school leader participating in the School Leadership Development Program; and

(ii) assist the school district's local school board to fulfill the requirements of Subsection 53A-1-1204(4).

(b) In consultation with the Superintendent and the governing board chair, the charter director of a low performing school shall select a charter administrator to participate in the School Leadership Development Program to support the school leader participating in the School Leadership Development Program.

(5)(a) In accordance with Subsection 53A-1-1209(4), the Superintendent shall award incentive pay to a school leader within 30 days after the school leader:

(i) completes the School Leadership Development Program; and

(ii) submits a written agreement to the Superintendent to work as described in Subsection 53A-1-1209(4).

(b) The Superintendent shall evenly divide the appropriation among the school leaders who meet the requirements of this Subsection (5).

(6) The Superintendent may award incentive pay to a school leader described in Subsection (5) for up to five years.

#### **R277-920-9. School Recognition and Reward Program.**

(1) The Superintendent shall distribute school recognition and reward program money to the principal of an eligible school:

(a) in accordance with Section 53A-1-1208; and

(b) within 30 days of the Board's official release of school grades for the year the eligible school is eligible for an award of money.

(2) The Superintendent shall notify the principal of an eligible school within 15 days of the Board's official release of school grades:

(a) that the eligible school is eligible for an award of money pursuant to Section 53A-1-1208; and

(b) of the amount of the award that the eligible school will receive.

(3) In accordance with Section 53A-1-1208, the principal shall distribute the money received under Subsection (1):

(a) to each educator assigned to the school for all of the years the school participated in the school turnaround program; and

(b) in a pro-rated manner to each educator assigned to the school for less time than the school participated in the school

turnaround program.

**KEY: principals, school improvements, school leaders  
February 8, 2016**

Art X, Sec 3  
53A-1-401(3)  
53A-1-12

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

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

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

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

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

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

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

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

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

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

**R307-110-6. Section V, Resources.**

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

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

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

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

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

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

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

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

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate

Matter, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-16. (Reserved.)**

Reserved.

**R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-18. Reserved.**

Reserved.

**R307-110-19. Section XI, Other Control Measures for Mobile Sources.**

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-20. Section XII, Transportation Conformity Consultation.**

The Utah State Implementation Plan, Section XII,

Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-21. Section XIII, Analysis of Plan Impact.**

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

**R307-110-22. Section XIV, Comprehensive Emission Inventory.**

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

**R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.**

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

**R307-110-24. Section XVI, Public Notification.**

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

**R307-110-25. Section XVII, Visibility Protection.**

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-26. Section XVIII, Demonstration of GEP Stack Height.**

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

**R307-110-27. Section XIX, Small Business Assistance Program.**

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

**R307-110-28. Regional Haze.**

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.**

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-30. Section XXII, General Conformity.**

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on November 6, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-37. Section XXIII, Interstate Transport.**

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY: air pollution, PM10, PM2.5, ozone  
February 4, 2016  
Notice of Continuation February 1, 2012**

19-2-104

**R307. Environmental Quality, Air Quality.**

**R307-312. Aggregate Processing Operations for PM2.5 Nonattainment Areas.**

**R307-312-1. Purpose.**

R307-312 establishes emission standards for sources in the aggregate processing industry, including aggregate processing equipment, hot mix asphalt plants, and concrete batch plants.

**R307-312-2. Applicability.**

(1) R307-312 applies to all crushers, screens, conveyors, hot mix asphalt plants, and concrete batch plants located within a PM2.5 nonattainment and maintenance area as defined in 40 CFR 81.345 (July 1, 2011) and geographically described as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber and Utah counties west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) The provisions of R307-312 do not apply to temporary hot mix asphalt plants.

**R307-312-3. Definitions.**

The following definitions apply to R307-312:

"Aggregate" means material of which the majority is nonmetallic minerals.

"Concrete batch plant" means any facility used to manufacture concrete by mixing aggregate with cement.

"Conveyor" means a device for transporting nonmetallic materials from one piece of equipment to another.

"Crusher" means a machine used to crush any nonmetallic minerals.

"Hot mix asphalt plant" means any facility used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements.

"Nonmetallic mineral" has the same definition as defined in 40 CFR 60.671.

"Screen" means a device for separating nonmetallic minerals according to size by passing undersize material through one or more mesh surfaces in series, and retaining oversize material on the mesh surfaces.

"Temporary" means not more than 180 operating days and not more than 365 calendar days.

**R307-312-4. Visible Emissions.**

(1) Visible emissions from sources subject to R307-312 shall not exceed the opacity limits as specified in Table 1.

CATEGORY	OPACITY LIMIT
Crushers	12%
Screens	7%
Conveyor transfer points	7%
Concrete batch plants	7%

(2) Opacity Observation.

(a) Opacity observations of emissions shall be conducted according to 40 CFR 60, Appendix A, Method 9.

(b) The duration of the Method 9 observations shall be 30 minutes (five six-minute averages).

(c) Compliance shall be based on the average of the five six-minute averages. The duration of Method 9 may be reduced to 6 minutes (one six-minute average) if the first six-minute average is below the limit specified in Table 1.

**R307-312-5. Hot Mix Asphalt Plants.**

(1) The filterable PM2.5 emission rate from a hot mix asphalt plant dryer shall not exceed 0.024 grains per dscf.

(a) Filterable PM2.5 emissions shall be determined by 40 CFR 51, Appendix M, Method 201A.

(2) From November 1 to March 1, a hot mix asphalt plant burning a fuel other than natural gas or liquefied petroleum gas (LPG) shall not produce more than 50% of its rated capacity.

(a) Production shall be determined by scale house records, belt scale records or manifest statements on a daily basis.

(b) Compliance shall be based on either the daily amount of hot mix asphalt produced averaged over the operating day or the daily amount of hot mix asphalt produced while burning a fuel other than natural gas or LPG averaged over the time the plant is operating while burning a fuel other than natural gas or LPG each day.

(c) Compliance shall be determined by production records and fuel records.

**R307-312-6. Compliance Schedule.**

(1) All sources subject to R307-312-4 or R307-312-5(2) shall be in compliance with this rule by June 7, 2013.

(2) All sources subject to R307-312-5(1) that begin construction prior to June 7, 2013, shall submit test results demonstrating compliance with R307-312-5(1) to the director by December 14, 2015.

(3) All sources subject to R307-312-5(1) that begin construction on or after June 7, 2013, shall submit test results demonstrating compliance with R307-312-5(1) to the director no later than 180 days after initial startup.

**KEY: air pollution, aggregate, asphalt, concrete  
February 4, 2016**

**19-2-101  
19-2-104  
19-2-109**

**R307. Environmental Quality, Air Quality.****R307-328. Gasoline Transfer and Storage.****R307-328-1. Purpose.**

The purpose of R307-328 is to establish Reasonably Available Control Technology (RACT) for control of gasoline vapors during the filling of gasoline cargo tank and storage tanks in Utah. The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery.

**R307-328-2. Applicability.**

(1) Gasoline Cargo Tanks. R307-328 applies to the owner or operator of any gasoline cargo tank that loads or unloads gasoline in Utah.

(2) Gasoline Dispensing. R307-328 applies to the owner or operator of any bulk terminal, bulk plant, stationary storage container, or service station located in Utah that dispenses 10,000 gallons or more in any one calendar month.

(3) This rule applies to all gasoline cargo tanks and gasoline dispensing facilities that operate within Utah according to the compliance schedule defined in section 328-9 of this rule.

(4) All references to 40 CFR in R307-328 shall mean the version that is effective as of the date referenced in R307-101-3.

**R307-328-3. Definitions.**

The following additional definitions apply to R307-328.

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is 6 inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

"Gasoline cargo tank" means gasoline cargo tank as defined in 40 CFR 63.421 that is hereby incorporated by reference.

**R307-328-4. Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles.**

(1) No person shall load or permit the loading of gasoline into any gasoline cargo tank unless the emissions from such vehicle are controlled by use of a vapor collection and control system and submerged or bottom filling. RACT shall be required and in no case shall vapor emissions to the atmosphere exceed 0.640 pounds per 1,000 gallons transferred.

(2) Such vapor collection and control system shall be properly installed and maintained.

(3) The loading device shall not leak.

(4) The loading device shall utilize the dry-break loading design couplings and shall be maintained and operated to allow no more than an average of 15 cc drainage per disconnect for 5 consecutive disconnects.

(5) All loading and vapor lines shall be equipped with fittings which make a vapor tight connection and shall automatically close upon disconnection to prevent release of the organic material.

(6) A gasoline storage and transfer installation that receives inbound loads and dispatches outbound loads ("bulk plant") need not comply with R307-328-4 if it does not have a daily average throughput of more than 3,900 gallons (15,000 or more liters) of gasoline based upon a 30-day rolling average. Such installations shall on-load and off-load gasoline by use of bottom or submerged filling. The emission limitation is based on operating procedures and equipment specifications using Reasonably Available Control Technology as defined in EPA documents EPA 450/2-77-026 October 1977, "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," and EPA-450/2-77-035 December 1977, "Control of Volatile

Organic Emissions from Bulk Gasoline Plants." The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the director.

(7) Hatches of gasoline cargo tanks shall not be opened at any time during loading operations except to avoid emergency situations or during emergency situations. Pressure relief valves on storage tanks and gasoline cargo tanks shall be set to release at the highest possible pressure, in accordance with State or local fire codes and National Fire Prevention Association guidelines. Pressure in the vapor collection system shall not exceed the gasoline cargo tank pressure relief setting.

(8) Each owner or operator of a gasoline storage or dispensing installation shall conduct testing of vapor collection systems used at such installation and shall maintain records of all tests for no less than two years. Testing procedures of vapor collection systems shall be approved by the director and shall be consistent with the procedures described in the EPA document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051.

(9) Semi-annual testing shall be conducted and records maintained of such test. The frequency of tests may be altered by the director upon submittal of documentation which would justify a change.

(10) The vapor collection and vapor processing equipment shall be designed and operated to prevent gauge pressure in the gasoline cargo tank from exceeding 18 inches of water and prevent vacuum from exceeding 6 inches of water. During testing and monitoring, there shall be no reading greater than or equal to 100 percent of the lower explosive limit measured at 1.04 inches around the perimeter of a potential leak source as detected by a combustible gas detector. Potential leak sources include, but are not limited to, piping, seals, hoses, connections, pressure or vacuum vents, and vapor hoods. In addition, no visible liquid leaks are permitted during testing or monitoring.

**R307-328-5. Stationary Source Container Loading.**

(1) No person shall transfer or permit the transfer of gasoline from any gasoline cargo tank into any stationary storage container with a capacity of 250 gallons or greater unless such container is equipped with a submerged fill pipe that extends to no more than twelve inches from the bottom of the storage tank for fill pipes installed on or before November 9, 2006, and no more than six inches from the bottom of the storage tank for fill pipes installed after November 9, 2006, and at least 90 percent of the gasoline vapor, by weight, displaced during the filling of the stationary storage container is prevented from being released to the atmosphere. This requirement shall not apply to:

(a) the transfer of gasoline into any stationary storage container of less than 550 gallons used primarily for the fueling of implements of husbandry if such container is equipped with a permanent submerged fill pipe;

(b) the transfer of gasoline into any stationary storage container having a capacity of less than 2,000 gallons which was installed prior to January 1, 1979, if such container is equipped with a permanent submerged fill pipe;

(c) the transfer of gasoline to storage tanks equipped with floating roofs or their equivalent which have been approved by the director.

(2) The 90 percent performance standard of the vapor control system shall be based on operating procedures and equipment specifications. The design effectiveness of such equipment and the operating procedure must be documented and submitted to and approved by the director.

(3) Each owner or operator of a gasoline storage tank or the owner or operator of the gasoline cargo tank subject to (1) above shall install vapor control equipment, which includes, but

is not limited to:

(a) vapor return lines and connections sufficiently free of restrictions to allow transfer of vapor to the gasoline cargo tank or to the vapor control system, and to achieve the required recovery;

(b) a means of assuring that the vapor return lines are connected to the gasoline cargo tank, or vapor control system, and storage tank during tank filling;

(c) restrictions in the storage tank vent line designed and operated to prevent:

(i) the release of gasoline vapors to the atmosphere during normal operation; and

(ii) gauge pressure in the gasoline cargo tank from exceeding 18 inches of water and vacuum from exceeding 6 inches of water.

#### **R307-328-6. Gasoline Cargo Tank.**

(1) Gasoline cargo tanks must be designed and maintained to be vapor tight during loading and unloading operations as well as during transport, except for normal pressure venting required under United States Department of Transportation Regulations.

(2) The design of the vapor recovery system shall be such that when the gasoline cargo tank is connected to an approved storage tank vapor recovery system or loading terminal, 90% vapor recovery efficiencies are realized. The connectors of the gasoline cargo tanks shall be compatible with the fittings on the fill pipes and vapor vents at the storage containers and gasoline loading terminals where the gasoline cargo tank will service or be serviced. Adapters may be used to achieve compatibility.

(3) No person shall knowingly allow the introduction of gasoline into, dispensing of gasoline from, or transportation of gasoline in a gasoline cargo tank that does not meet the leak tight testing requirements of R307-328-7.

(4) A vapor-laden gasoline cargo tank may be refilled only at installations equipped to recover, process or dispose of vapors. Gasoline cargo tanks that only service locations with storage containers specifically exempted from the requirements of R307-328-5 need not be retrofitted to comply with R307-328-6(1)-(3) above, provided such gasoline cargo tanks are loaded through a submerged fill pipe or equivalent equipment provided the design and effectiveness of such equipment are documented and submitted to and approved by the director.

#### **R307-328-7. Vapor Tightness Testing.**

(1) Gasoline cargo tanks and their vapor collection systems shall be tested annually for leakage in accordance with the test methods and vapor tightness standards in 40 CFR 63.425(e) which are hereby incorporated by reference.

(2) Each owner or operator of a gasoline cargo tank shall have documentation in their possession demonstrating that the gasoline cargo tank has passed the annual test in (1) above within the preceding twelve months.

(3) The vapor tightness documentation described in (2), as well as record of any maintenance performed, shall be retained by the owner or operator of the gasoline cargo tank for a two year period and be available for review by the director or the director's representative.

(4) The owner or operator of a railcar gasoline cargo tank may use the testing, recordkeeping, and reporting requirements in 40 CFR 63.425(i), that is hereby incorporated by reference, as an alternative to the annual testing requirements in (1) through (3) above.

#### **R307-328-8. Alternate Methods of Control.**

(1) Any person may apply to the director for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a

demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by R307-328, or that the alternate test method is equivalent to that required by these rules. The director shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.

(2) Manufacturer's operational specifications, records, and testings of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device. In addition, the owner or operator must meet the applicable requirements of record keeping for any control device. A record of all tests, monitoring, and inspections required by R307-328 shall be maintained by the owner or operator for a minimum of 2 years and shall be made available to the director or the director's representative upon request. Any malfunctioning control device shall be repaired within 15 calendar days after it is found by the owner or operator to be malfunctioning, unless otherwise approved by the director.

(3) For purposes of determining compliance with emission limits, volatile organic compounds and nitrogen oxides will be measured by the test methods identified in federal regulation or approved by the director. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

#### **R307-328-9. Compliance Schedule.**

(1) Effective May 1, 2000, all Facilities located in Davis, Salt Lake, Utah, and Weber Counties shall be in compliance with this rule.

(2) All other facilities located in Utah, shall be in compliance with this rule according to the following phase-in schedule:

(a) Facilities located in Box Elder, Cache, Tooele and Washington Counties shall be in compliance with this rule by April 30, 2009.

(b) Facilities located in Emery, Iron, Juab, Millard, Sevier, Summit and Uintah Counties shall be in compliance with this rule by April 30, 2010.

(c) All facilities located in Utah shall be in compliance with this rule by April 30, 2011.

(3) If this implementation schedule results in a scheduling and/or financial hardship for an individual facility, that facility may request a six-month extension from the director. A maximum of two six-month extensions may be granted. Regardless of extension requests submitted, all facilities must be in compliance with this rule not later than April 30, 2011.

(4) A request for an extension must be documented and contain valid reasons why a facility will not be able to meet the phase-in schedule indicated in (2)(a) or (b) above. A late start on preparation or planning is not a valid reason to grant an extension. The request for extension must also contain a proposed implementation schedule that shows compliance to this rule at the earliest possible date, but no later than April 30, 2011.

(5) The vapor tightness testing standard in R307-328-7(1) shall apply to tests conducted after June 7, 2011. All gasoline cargo tanks shall be tested using the vapor tightness testing standard in R307-328-7(1) by June 7, 2012.

#### **R307-328-10. Authorized Contractors.**

(1) All modifications performed on underground storage tanks regulated by Title 19, Chapter 6, Part 4, the Utah Underground Storage Tank Act, to bring them into compliance with R307-328, shall be performed by contractors certified

under R311-201.

**KEY: air pollution, gasoline transport, ozone**

**February 4, 2016**

**19-2-101**

**Notice of Continuation February 1, 2012 19-2-104(1)(a)**



**R307. Environmental Quality, Air Quality.****R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas.****R307-403-1. Purpose and Definitions.**

(1) Purpose. This rule implements the federal nonattainment area permitting program for major sources as required by 40 CFR 51.165. In addition, the rule contains new source review provisions for some non-major sources in PM10 nonattainment areas. This rule supplements, but does not replace, the permitting requirements of R307-401.

(2) Unless otherwise specified, all references to 40 CFR in R307-403 shall mean the version that is in effect on July 1, 2012.

(3) Except as provided in R307-403-1(4), the definitions in 40 CFR 51.165(a)(1) are hereby incorporated by reference.

(4)(a) "Reviewing authority" means the director.

(b) In the definition of "significant" in 40 CFR 51.165(a)(1)(x) add the following text at the end of the pollutant emission rate for PM<sub>2.5</sub>: "; and in the Logan, Salt Lake City, and Provo PM<sub>2.5</sub> nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345, 40 tpy of volatile organic compounds."

(c) In the definition of "regulated NSR pollutant" in 40 CFR 51.165(a)(1)(xxvii) the following subparagraph is added to 51.165(a)(1)(xxvii)(4): "(i) Volatile organic compounds are precursors to PM<sub>2.5</sub> and ammonia is not a precursor to PM<sub>2.5</sub> in the Logan, Salt Lake City, and Provo PM<sub>2.5</sub> nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345."

(d) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition of "major modification" in 40 CFR 51.165(a)(1)(v)(C), the second sentence in subparagraph (1);

(ii) the definition of "process unit" in 40 CFR 51.165(a)(1)(xliii);

(iii) the definition of "functionally equivalent component" in 40 CFR 51.165(a)(1)(xliv);

(iv) the definition of "fixed capital cost" in 40 CFR 51.165(a)(1)(xlv); and

(v) the definition of "total capital investment" in 40 CFR 51.165(a)(1)(xlvi).

**R307-403-2. Applicability.**

(1) R307-403 applies to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Clean Air Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(a) Except as otherwise provided in paragraph R307-403-2(2), and consistent with the definition of major modification contained in 40 CFR 51.165(a)(1)(v)(A), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in 40 CFR 51.165(a)(1)(xxvii)), and a significant net emissions increase (as defined in 40 CFR 51.165(a)(1)(vi) and (x)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs R307-403-2(c) through (e). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e.,

the second step of the process) is contained in the definition in 40 CFR 51.165(a)(1)(vi). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in 40 CFR 51.165(a)(1)(xxviii)) and the baseline actual emissions (as defined in 40 CFR 51.165(a)(1)(xxv)(A) and (B), as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in 40 CFR 51.165(a)(1)(x)).

(d) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in 40 CFR 51.165(a)(1)(iii)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in 40 CFR 51.165(a)(1)(xxv)(C)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in 40 CFR 51.165(a)(1)(x)).

(e) Reserved.

(f) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in R307-403-2(1)(c) through (d) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in 40 CFR 51.165(a)(1)(x)).

(2) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under R307-403-11.

(3) Reserved.

(4) Reserved.

(5)(a) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the state implementation plan and any other requirements under local, state or federal law.

(b) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of R307-403 shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(6) The provisions of R307-403-2(6)(a) through (f) apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs 40 CFR 51.165(a)(1)(xxviii)(B)(1) through (3) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any

regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under 40 CFR 51.165(a)(1)(xxviii)(B)(3) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in R307-403-2(6)(a) to the reviewing authority. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph R307-403-2(6)(a)(ii); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(d) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year during which records must be generated under paragraph R307-403-2(6)(c) setting out the unit's annual emissions during the year that preceded submission of the report.

(e) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph R307-403-2(6)(a), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph R307-403-2(6)(c), by a significant amount (as defined in 40 CFR 51.165(a)(1)(x)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph R307-403-2(6)(c). Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

- (i) The name, address and telephone number of the major stationary source;
- (ii) The annual emissions as calculated pursuant to paragraph R307-403-2(6)(c); and
- (iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(f) A "reasonable possibility" under (R307-403-2(6)) occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in 40 CFR 51.165(a)(1)(xxvii)(without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under 40 CFR 51.165(a)(1)(xxviii)(B)(3), sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraph 40 CFR 51.165(a)(1)(xxvii) without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this paragraph, and not also within the meaning of paragraph R307-403-2(6)(f)(i), then provisions R307-403-2(6)(b) through (e) do not apply to the project.

(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant

to paragraph R307-403-2(6) above available for review upon a request for inspection by the director or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(8) The requirements of R307-403 applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the EPA Administrator has granted a nitrogen oxides waiver applying the standards set forth under section 182(f) of the Clean Air Act and the waiver continues to apply.

(9) Reserved.

(10) The requirements of R307-403 applicable to major stationary sources and major modifications of PM<sub>10</sub> shall also apply to major stationary sources and major modifications of PM<sub>10</sub> precursors, except where the Administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels that exceed the PM<sub>10</sub> ambient standards in the area.

(11) Reserved.

(12) R307-403 applies to any major source or major modification that is located outside a nonattainment area and is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Clean Air Act and that causes the significant increments in R307-403-3(1) to be exceeded in the nonattainment area.

(13) R307-403-5 applies to any new or modified source in a PM<sub>10</sub> nonattainment area.

**R307-403-3. Review of Major Sources of Air Quality Impact.**

Every major new source or major modification must be reviewed by the director to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the director as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

(1) If the owner or operator of a source proposes to locate the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

Pollutant	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SULFUR DIOXIDE	1.0	5		25	
PM10	1.0	3			
CO			500		2000

(2) If the director finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the director shall approve the proposed source if and only if:

- (a) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and
  - (b) the new source has acquired sufficient offset to avoid a new violation of the NAAQS and
  - (c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.
- (3) If the director finds that the emissions from a proposed

source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(a) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(b) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable rules in R307, including the Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, R307, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(c) emission offsets to the extent provided in R307-403-4, 5 and 6 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(d) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(e) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

(4) A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in (1) above to be exceeded in the nonattainment or maintenance area is subject to the requirements of (3) above.

#### **R307-403-4. Offsets: General Requirements.**

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or R307, including the State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of (1) and (2) above.

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in 42 U.S.C. 7503(e) (Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990).

#### **R307-403-5. Offsets: PM10 Nonattainment Areas.**

(1) New sources which have a potential to emit, or modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are

located in or impact a PM10 Nonattainment Area as defined in (a) below, shall obtain an enforceable offset as defined in (b) and (c) below.

(a) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(b) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(c) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

(2) For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In areas where offsets are required for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-403 or R307-420 shall apply.

#### **R307-403-6. Offsets: Ozone Nonattainment Areas.**

In any ozone nonattainment area, new sources and modifications to existing sources as defined and outlined in 42 U.S.C. 7511a (Section 182 of the Clean Air Act) shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants.

#### **R307-403-7. Offsets: Baseline.**

The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

#### **R307-403-8. Offsets: Banking of Emission Offset Credit.**

Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51, Appendix S. To preserve banked emission reductions, the director must identify them in either the Utah SIP or an order issued pursuant to R307-401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

#### **R307-403-9. Construction in Stages.**

When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of R307-403.

#### **R307-403-10. Analysis of Alternatives.**

The owner or operator of a major new source or major modification to be located in a nonattainment area or which would impact a nonattainment area must, in addition to the requirements in R307-403, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The director shall review the analysis. The analysis and the director's comments shall be subject to public comment as required by R307-401-7. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or

modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

**R307-403-11. Actuals PALS.**

The provisions of 40 CFR 51.165(f)(1) through (14) are hereby incorporated by reference.

**KEY: air quality, nonattainment, offset**

**December 5, 2013**

**19-2-104**

**Notice of Continuation June 6, 2012**

**19-2-108**

**R307. Environmental Quality, Air Quality.****R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).****R307-405-1. Purpose.**

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were vacated by the DC Circuit Court of Appeals on March 17, 2006. This rule supplements, but does not replace, the permitting requirements of R307-401.

**R307-405-2. Applicability.**

(1) All references to 40 CFR in R307-405 shall mean the version that is in effect on July 1, 2011.

(2) The provisions of 40 CFR 52.21(a)(2) are hereby incorporated by reference.

(3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

**R307-405-3. Definitions.**

(1) Except as provided in (2) and (9) below, the definitions contained in 40 CFR 52.21(b) are hereby incorporated by reference.

(2)(a) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(b) "Reviewing Authority" means the director.

(c)(i) The term "Administrator" shall be changed to "director" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

(A) 40 CFR 52.21(b)(17),

(B) 40 CFR 52.21(b)(37)(i),

(C) 40 CFR 52.21(b)(43),

(D) 40 CFR 52.21(b)(48)(ii)(c),

(E) 40 CFR 52.21(b)(50)(i),

(F) 40 CFR 52.21(l)(2),

(G) 40 CFR 52.21(p)(2), and

(H) 40 CFR 51.166(q)(2)(iv).

(d) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21(b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(e) In the definition of "Regulated NSR pollutant" in 40 CFR 52.21(b)(50), subparagraph (iv) shall be changed to read, "Any pollutant that otherwise is subject to regulation under the Act." A new subparagraph (v) shall be added that reads, "The term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the federal Clean Air Act, or added to the list pursuant to section 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the federal Clean Air Act."

(3) "Air Quality Related Values," as used in analyses

under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), that is hereby incorporated by reference.

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

(9) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraph (d) of this section.

(b) For purposes of paragraphs (c) through (d) of this section, the term "tons per year (tpy) CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96).

(ii) Sum the resultant value from paragraph (b)(i) of this section for each gas to compute a tpy CO<sub>2</sub>e.

(c) The term "emissions increase" as used in paragraph (d) of this section shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv) that is incorporated by reference in R307-405-2) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23) that is incorporated by reference in R307-405-3) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value in paragraph 40 CFR 52.21(b)(23)(ii).

(d) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

**R307-405-4. Area Designations.**

(1) Pursuant to section 162(a) of the federal Clean Air Act, the following areas are designated as mandatory Class I areas:

(a) Arches National Park,

(b) Bryce Canyon National Park,

(c) Canyonlands National Park,

- (d) Capitol Reef National Park, and
- (e) Zion National Park.

(2) Pursuant to section 162(b) of the federal Clean Air Act, all other areas in Utah are designated as Class II unless designated as nonattainment areas.

- (3) No areas in Utah are designated as Class III.

**R307-405-5. Area Redesignation.**

Any person may petition the Board to change the classification of an area designated under R307-405-4, except for mandatory Class I areas designated under R307-405-4(1).

(1) The petition shall contain a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation.

(2) The petition shall contain a demonstration that the proposed redesignation meets the criteria outlined in Section VIII of the State Implementation Plan and 40 CFR 51.166(e) and (g), that is hereby incorporated by reference.

**R307-405-6. Ambient Air Increments.**

The provisions of 40 CFR 52.21(c) are hereby incorporated by reference.

**R307-405-7. Ambient Air Ceilings.**

The provisions of 40 CFR 52.21(d) are hereby incorporated by reference.

**R307-405-8. Exclusions from Increment Consumption.**

(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(a) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(b) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(c) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen dioxides from stationary sources which are affected by plan revisions approved by the EPA Administrator as meeting the criteria specified in 40 CFR 51.166(f)(4). The temporary increase shall not exceed 2 years in duration unless a longer time is approved by the EPA Administrator. This exclusion is not renewable.

(2) No exclusion of concentration under (1)(a) or (b) above shall apply more than five years after the effective date of the order to which paragraph (1)(a) refers or the plan to which paragraph (1)(b) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under (1)(e) shall apply to an emission increase from a stationary source which would:

- (a) impact a Class I area or an area where an applicable increment is known to be violated; or
- (b) cause or contribute to a violation of the national

ambient air quality standards.

**R307-405-9. Stack Heights.**

The provisions of 40 CFR 52.21(h) are hereby incorporated by reference.

**R307-405-10. Exemptions.**

(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii) are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(i)(2) through (5) are hereby incorporated by reference.

**R307-405-11. Control Technology Review.**

The provisions of 40 CFR 52.21(j) are hereby incorporated by reference.

**R307-405-12. Source Impact Analysis.**

The provisions of 40 CFR 52.21(k) are hereby incorporated by reference.

**R307-405-13. Air Quality Models.**

The provisions of 40 CFR 52.21(l) are hereby incorporated by reference.

**R307-405-14. Air Quality Analysis.**

(1) The provisions of 40 CFR 52.21(m)(1)(i) through (iv), (vi), and (viii) are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(m)(2) and (3) are hereby incorporated by reference.

**R307-405-15. Source Information.**

The provisions of 40 CFR 52.21(n) are hereby incorporated by reference.

**R307-405-16. Additional Impact Analysis.**

The provisions of 40 CFR 52.21(o) are hereby incorporated by reference.

**R307-405-17. Sources Impacting Federal Class I Areas: Additional Requirements.**

(1) The provisions of 40 CFR 52.21(p) are hereby incorporated by reference.

(2) The director will transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the EPA Administrator of every action related to the consideration of such permit.

**R307-405-18. Public Participation.**

(1) Except as provided in (2), the provisions of 40 CFR 51.166(q)(1) and (2) are hereby incorporated by reference.

(2) The phrase "within a specified time period" in 40 CFR 51.166(q)(1) shall be replaced with the phrase "within 30 days of receipt of the PSD permit application".

**R307-405-19. Source Obligation.**

The provisions of 40 CFR 52.21(r) are hereby incorporated by reference.

**R307-405-20. Innovative Control Technology.**

(1) Except as provided in (2), the provisions of 40 CFR 52.21(v) are hereby incorporated by reference.

(2)(a) The reference to "40 CFR 124.10" in 40 CFR 52.21(v)(1) shall be changed to "R307-405-18".

(b) 40 CFR 52.21(v)(2) shall be changed to read "The director shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:".

**R307-405-21. Actuals PALs.**

(1) Except as provided in (2), the provisions of 40 CFR 52.21(aa) are hereby incorporated by reference.

(2) (a) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(4)(ii) shall be changed to "R307-403".

(b) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(8)(ii)(2) shall be changed to "R307-403".

(c) The references to "70.6(a)(3)(iii)(B) of this chapter" in 40 CFR 52.21(aa)(14)(ii) shall be changed to "R307-415-6a(3)(c)(ii)".

(d) The date of "March 3, 2003" in 40 CFR 52.21(aa)(15)(i) and (ii) shall be changed to "June 16, 2006".

**R307-405-22. Banking of Emission Offset Credit in PSD Areas.**

Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the director must identify them in either the Utah SIP or an order. The director will provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

**KEY: air pollution, PSD, Class I area, greenhouse gases**  
**February 4, 2016** **19-2-104**  
**Notice of Continuation January 28, 2014**

**R307. Environmental Quality, Air Quality.****R307-415. Permits: Operating Permit Requirements.****R307-415-1. Purpose.**

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

**R307-415-2. Authority.**

(1) R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

(2) All references to 40 CFR in R307-415, except when otherwise specified, are effective as of the date referenced in R307-101-3.

**R307-415-3. Definitions.**

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the director offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the director that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the



source belongs to any one of the following categories of stationary source:

- (i) Coal cleaning plants with thermal dryers;
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants, furnace process;
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

- (i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;
- (ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;
- (iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;
- (iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests

otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the director proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the director;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

#### **R307-415-4. Applicability.**

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(f) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

## (2) Exemptions.

(a) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters, are exempted from the requirement to obtain a permit.

(b) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, are exempted from the requirement to obtain a permit. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(c) An area source subject to a regulation under Section 111 or 112 of the Act (42 U.S.C. 7411 or 7412) promulgated after July 21, 1992 is exempt from the obligation to obtain a Part 70 permit if:

(i) the regulation specifically exempts the area source category from the obligation to obtain a Part 70 permit, and

(ii) the source is not required to obtain a permit under R307-415-4(1) for a reason other than its status as an area source under the Section 111 or 112 regulation containing the exemption.

## (3) Emissions units and Part 70 sources.

(a) For major sources, the director shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1), the director shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

**R307-415-5a. Permit Applications: Duty to Apply.**

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the director to assist a source in submitting a complete application.

## (1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements

under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The director shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

## (2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the director notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the director determines that additional information is necessary to evaluate or take final action on that application, the director may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the director.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

## (c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

## (ii) General Permits.

(A) The director shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the director shall establish a due date for permit applications from all area sources in that source category.

(C) The director shall provide at least six months notice

that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the director for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the director may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the director shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

**R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.**

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

**R307-415-5c. Permit Applications: Standard Requirements.**

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air

pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required

by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the director, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the director.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

#### **R307-415-5d. Permit Applications: Certification.**

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

#### **R307-415-5e. Permit Applications: Insignificant Activities and Emissions.**

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable

requirement.

(b) Air pollutants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air pollutants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The director may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air pollutants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air pollutant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul

roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters, air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air pollutants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The director may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

### **R307-415-6a. Permit Content: Standard Requirements.**

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the director elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the director shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the director. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable

breakdown provisions of R307-107. The director may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the director consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the director. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

**R307-415-6b. Permit Content: Federally-Enforceable Requirements.**

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The director shall determine which conditions are "state requirements" in each operating permit.

**R307-415-6c. Permit Content: Compliance Requirements.**

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the director or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the director. Such progress reports

shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the director;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the director may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the director;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the director may require.

**R307-415-6d. Permit Content: General Permits.**

(1) The director may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the director shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit

must apply to the director for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The director may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the director may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

**R307-415-6e. Permit Content: Temporary Sources.**

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

**R307-415-6f. Permit Content: Permit Shield.**

(1) Except as provided in R307-415, the director shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the director to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

**R307-415-6g. Permit Content: Emergency Provision.**

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable

increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the director within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

#### **R307-415-7a. Permit Issuance: Action on Application.**

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The director has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1) and (2), the director has complied with the requirements for public participation under R307-415-7i;

(c) The director has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the director shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The director shall promptly provide notice to the applicant of whether the application is complete. Unless the director requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The director shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory

provisions. The director shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

#### **R307-415-7b. Permit Issuance: Requirement for a Permit.**

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f) and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the director takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the director any additional information identified as being needed to process the application.

#### **R307-415-7c. Permit Renewal and Expiration.**

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c) and the director fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

#### **R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.**

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-401;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the director and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the director in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the director shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in



emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the director and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the director shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The director shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the director and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the director and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise

regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

#### **R307-415-7e. Permit Revision: Administrative Amendments.**

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the director consistent with the following:

(a) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the director designates any such permit revisions as having been made pursuant to this paragraph. The director shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The director shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The director shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

#### **R307-415-7f. Permit Revision: Modification.**

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a) above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the director to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the director shall notify EPA and affected States of the requested permit modification. The director promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The director may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the director that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the director's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the director shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-

413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the director may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the director to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the director shall notify EPA and affected States of the requested permit modifications. The director shall send any notice required under R307-415-8(2)(b) to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the director shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be

used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The director shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

#### **R307-415-7g. Permit Revision: Reopening for Cause.**

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The director or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the director determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the director at least 30 days in advance of the date that the permit is to be reopened, except that the director may provide a shorter time period in the case of an emergency.

#### **R307-415-7h. Permit Revision: Reopenings for Cause by EPA.**

The director shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The director may request a 90-day extension if a new or revised permit application is necessary or if the director determines that the permittee must submit additional information.

#### **R307-415-7i. Public Participation.**

The director shall provide for public notice, comment and

an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the director, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the director; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the director that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The director shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The director shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The director shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

#### **R307-415-8. Permit Review by EPA and Affected States.**

(1) Transmission of information to EPA.

(a) The director shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the director to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the director may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The director shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The director shall give notice of each draft permit to any affected State on or before the time that the director provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The director, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the director to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the director's reasons for not accepting any such

recommendation. The director is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the director shall not issue the permit. If the director fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the director shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the director has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the director may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The director shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

### **R307-415-9. Fees for Operating Permits.**

(1) Definitions. The following definition applies only to R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the director in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source

elects, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the director that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The director may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The director may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

**KEY: air pollution, greenhouse gases, operating permit, emission fees**

**February 4, 2016**

**Notice of Continuation June 6, 2012**

**19-2-109.1**

**19-2-104**

**R317. Environmental Quality, Water Quality.****R317-1. Definitions and General Requirements.****R317-1-1. Definitions.**

"Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

"Biological assessment" means an evaluation of the biological condition of a water body using biological surveys and other direct measurements of composition or condition of the resident living organisms.

"Biological criteria" means numeric values or narrative descriptions that are established to protect the biological condition of the aquatic life inhabiting waters that have been given a certain designated aquatic life use.

"Board" means the Utah Water Quality Board.

"BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

"Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

"CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

"COD" means chemical oxygen demand.

"Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water rules.

"Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

"Director" means the Director of the Division of Water Quality.

"Division" means the Utah State Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

"Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

"Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

"Human-induced stressor" means perturbations directly or indirectly caused by humans that alter the components, patterns, and/or processes of an ecosystem.

"Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

"Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

"Influent" means the total wastewater flow entering a wastewater treatment works.

"Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

"Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system

not covered under the definition of an onsite wastewater system. The Division controls the installation of such systems.

"Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating Permit" is a State issued permit issued to any wastewater treatment works covered under Rules R317-3 or R317-5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems R317-4.

"Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

"Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

"Sewage" is synonymous with the term "domestic wastewater".

"Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

"Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

"SS" means suspended solids.

Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

"Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

"TSS" means total suspended solids.

"Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

"Use Attainability Analysis" means a structured scientific assessment of the factors affecting the attainment of the uses specified in R317-2-6. The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal criteria as described in 40 CFR 131.10(g) (1-6).

"Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

"Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

"Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

### **R317-1-2. General Requirements.**

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these rules.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers) without first receiving a permit to do so from the Director or its authorized representative, except as provided herein.

A. Body Politic Required. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

B. Submission of Plans. Any person desiring a permit shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Director for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet or less and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

C. Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these rules.

D. Approval of Plans. Issuance of a construction permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes.

E. Permit Expiration. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

F. Exceptions.

1. Wastewater facilities that discharge to an existing sewer system and serve only units that are under single ownership, or serve multiple units under separate ownership where the wastewater facilities are under the sponsorship of the public sewer system to which they discharge. This exception does not apply to pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day).

2. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with rules for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the rules shall be determined by an on-site inspection by the appropriate health authority.

3. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.3 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these rules and under circumstances which assure compliance with water quality standards in R317-2.

2.4 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these rules and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

### **R317-1-3. Requirements for Waste Discharges.**

3.1 Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of Rule R317-2 Water Quality Standards, except that the Director may waive compliance with these requirements for specific criteria listed in Rule R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Director.

3.2 Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/L nor shall the arithmetic mean exceed 30 mg/L

during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 mL or 200 per 100 mL respectively, nor shall the geometric mean exceed 2500 per 100 mL or 250 per 100 mL respectively, during any 7-day period; or, the geometric mean of *E. coli* bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 mL nor shall the geometric mean exceed 158 per 100 mL respectively during any 7-day period. Exceptions to this requirement may be allowed by the Director where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Director may allow exceptions to the requirements of Subsections R317-1-3.2.A, R317-1-3.2.B, and R317-1-3.2.D where the discharge will be of short duration and where there will be no significant detrimental effect on receiving water quality or downstream beneficial uses.

G. The Director may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/L for a monthly average nor 65 mg/L for a weekly average provided the following criteria are met:

1. the lagoon system is operating within the organic and hydraulic design capacity established by Rule R317-3;
2. the lagoon system is being properly operated and maintained;
3. the treatment system is meeting all other permit limits;
4. there are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Director that the IU is not contributing constituents in concentrations or quantities likely to significantly affect the treatment works; and
5. a Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

### 3.3 Technology-based Limits for Controlling Phosphorus Pollution.

#### A. Technology-based Phosphorus Effluent Limits (TBPEL)

1. All non-lagoon treatment works discharging wastewater to surface waters of the state shall provide treatment processes which will produce effluent less than or equal to an annual mean of 1.0 mg/L for total phosphorus.

2. The TBPEL shall be achieved by January 1, 2020, or no later than January 1, 2025, after a variance has been granted under Subsection R317-1-3.3.C.1.e.

#### B. Discharging Lagoons -Phosphorus Loading Cap

1. No TBPEL will be instituted for discharging treatment lagoons. Instead, each discharging lagoon will be evaluated to determine the current annual average total phosphorus load measured in pounds per year based on monthly average flow rates and concentrations. Absent field data to determine these

loads, and in case of intermittent discharging lagoons, the phosphorus load cap will be estimated by the Director.

2. A cap of 125% of the current annual total phosphorus load will be established and referred to as phosphorus loading cap. Once the lagoon's phosphorus loading cap has been reached, the owner of the facility will have five years to construct treatment processes or implement treatment alternatives to prevent the total phosphorus loading cap from being exceeded.

3. The load cap shall become effective July 1, 2018.

#### C. Variances for TBPEL and Phosphorus Loading Caps

1. The Director may authorize a variance to the TBPEL or phosphorus loading cap under any of the following conditions:

a. Where an existing TMDL has allocated a total phosphorus wasteload to a treatment works, no TBPEL or phosphorus loading cap, as applicable, will be applied.

b. If the owner of a discharging treatment works can demonstrate that imposing the TBPEL or phosphorus loading cap would result in an economic hardship, an alternative TBPEL or phosphorus loading cap that would not cause economic hardship may be applied. "Economic hardship" for a publicly owned treatment works is defined as sewer service costs that, as a result of implementing a TBPEL or phosphorus loading cap, would be greater than 1.4% of the median adjusted gross household income of the service area based on the latest information compiled by the Utah State Tax Commission, after inclusion of grants, loans, or other funding made available by the Utah Water Quality Board or other sources. The Director will consider other demonstrations of economic hardship on a case-by-case basis.

c. If the owner of a discharging treatment works can demonstrate that the TBPEL or phosphorus loading cap are clearly unnecessary to protect waters downstream from the point of discharge, no TBPEL or phosphorus loading cap will be applied.

d. If the owner of the discharging treatment works can demonstrate that a commensurate phosphorus reduction can be achieved in receiving waters using innovative alternative approaches such as water quality trading, seasonal offsets, effluent reuse, or land application.

e. Where the owner of a non-lagoon discharging treatment works demonstrates due diligence toward construction of a treatment facility designed to meet the TBPEL, the compliance date shall be no later than January 1, 2025.

2. All variances to TBPEL and phosphorus loading caps shall be revisited no more frequently than every five years, or when a substantive change in facility operations or a substantive facility upgrade occurs, to determine if the rationale used to justify the conditions in Subsection R317-1-3.3.C remains applicable.

3. For treatment works required to implement TBPEL or a phosphorus loading cap, the demonstration under Subsection R317-1-3.3.C must be made by January 1, 2018. Unless this demonstration is made, the owner of the discharging treatment works must proceed to implement the TBPEL or phosphorus loading cap, as applicable, in accordance with, respectively, Subsections R317-1-3.3.A and R317-1-3.3.B.

#### D. Facility Optimization to Remove Total Inorganic Nitrogen

1. If the owner of a discharging treatment works agrees to optimize the owner's facility, either through operational changes, a capital construction project, or both, to reduce effluent total inorganic nitrogen concentrations to a level agreeable to the Director, a waiver of up to ten years from meeting either water quality-based effluent limits or technology-based effluent limits for total inorganic nitrogen will be granted. This includes meeting any total inorganic nitrogen limit that may result from a TMDL or other water quality study that is specific to the receiving water of the treatment works.

2. The waiver period under this section would begin upon implementation of the optimization improvements or another date agreed to by the owner of the treatment works and the Director.

3. The elements of the waiver under this section will be identified in a compliance agreement that will be incorporated into the facility's UPDES permit.

4. The waiver identified under this section must be granted before January 1, 2020. Thereafter, no such waiver will be considered or granted.

**E. Monitoring**

1. All discharging treatment works are required to implement, at a minimum, monthly monitoring of:

a. influent for total phosphorus (as P) and total Kjeldahl nitrogen (as N) concentrations; and

b. effluent for total phosphorus and orthophosphate (as P), and ammonia, nitrate-nitrite, and total Kjeldahl nitrogen (as N).

2. The Director may authorize a variance to the monitoring requirements identified in Subsection R317-1-3.3.D.1.

3. All monitoring under Subsection R317-1-3.3.D shall be based on 24-hour composite samples by use of an automatic sampler or by combining a minimum of four grab samples collected at least two hours apart within a 24-hour period.

4. These monitoring requirements shall be self-implementing beginning July 1, 2015.

**3.4 Pollutants In Diverted Water Returned To Stream.**

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

**R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.**

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these rules shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Director as being feasible and equally protective of human health and the environment.

4.2 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

**R317-1-5. Use of Industrial Wastewaters.**

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Director based on a case-specific analysis of human health and environmental concerns.

**R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.**

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

**R317-1-7. TMDLs.**

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

- 7.1 Middle Bear River -- February 23, 2010
- 7.2 Chalk Creek -- December 23, 1997
- 7.3 Otter Creek -- December 23, 1997
- 7.4 Little Bear River -- May 23, 2000
- 7.5 Mantua Reservoir -- May 23, 2000
- 7.6 East Canyon Creek -- September 14, 2010
- 7.7 East Canyon Reservoir -- September 14, 2010
- 7.8 Kents Lake -- September 1, 2000
- 7.9 LaBaron Reservoir -- September 1, 2000
- 7.10 Minersville Reservoir -- September 1, 2000
- 7.11 Puffer Lake -- September 1, 2000
- 7.12 Scofield Reservoir -- September 1, 2000
- 7.13 Onion Creek (near Moab) -- July 25, 2002
- 7.14 Cottonwood Wash -- September 9, 2002
- 7.15 Deer Creek Reservoir -- September 9, 2002
- 7.16 Hyrum Reservoir -- September 9, 2002
- 7.17 Little Cottonwood Creek -- September 9, 2002
- 7.18 Lower Bear River -- September 9, 2002
- 7.19 Malad River -- September 9, 2002
- 7.20 Mill Creek (near Moab) -- September 9, 2002
- 7.21 Spring Creek -- September 9, 2002
- 7.22 Forsyth Reservoir -- September 27, 2002
- 7.23 Johnson Valley Reservoir -- September 27, 2002
- 7.24 Lower Fremont River -- September 27, 2002
- 7.25 Mill Meadow Reservoir -- September 27, 2002
- 7.26 UM Creek -- September 27, 2002
- 7.27 Upper Fremont River -- September 27, 2002
- 7.28 Deep Creek -- October 9, 2002
- 7.29 Uinta River -- October 9, 2002
- 7.30 Pineview Reservoir -- December 9, 2002
- 7.31 Browne Lake -- February 19, 2003
- 7.32 San Pitch River -- November 18, 2003
- 7.33 Newton Creek -- June 24, 2004
- 7.34 Panguitch Lake -- June 24, 2004
- 7.35 West Colorado -- August 4, 2004
- 7.36 Silver Creek -- August 4, 2004
- 7.37 Upper Sevier River -- August 4, 2004
- 7.38 Lower and Middle Sevier River -- August 17, 2004
- 7.39 Lower Colorado River -- September 20, 2004
- 7.40 Upper Bear River -- August 4, 2006
- 7.41 Echo Creek -- August 4, 2006
- 7.42 Soldier Creek -- August 4, 2006
- 7.43 East Fork Sevier River -- August 4, 2006
- 7.44 Koosharem Reservoir -- August 4, 2006
- 7.45 Lower Box Creek Reservoir -- August 4, 2006
- 7.46 Otter Creek Reservoir -- August 4, 2006
- 7.47 Thistle Creek -- July 9, 2007



- 7.48 Strawberry Reservoir -- July 9, 2007
- 7.49 Matt Warner Reservoir -- July 9, 2007
- 7.50 Calder Reservoir -- July 9, 2007
- 7.51 Lower Duchesne River -- July 9, 2007
- 7.52 Lake Fork River -- July 9, 2007
- 7.53 Brough Reservoir -- August 22, 2008
- 7.54 Steinaker Reservoir -- August 22, 2008
- 7.55 Red Fleet Reservoir -- August 22, 2008
- 7.56 Newcastle Reservoir -- August 22, 2008
- 7.57 Cutler Reservoir -- February 23, 2010
- 7.58 Pariette Draw -- September 28, 2010
- 7.59 Emigration Creek -- September 1, 2011
- 7.60 Jordan River -- June 27, 2012
- 7.61 Colorado River -- December 5, 2013
- 7.62 Echo Reservoir -- March 26, 2014
- 7.63 Rockport Reservoir -- March 26, 2014

### **R317-1-8. Penalty Criteria for Civil Settlement Negotiations.**

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to \$10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to \$25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts

to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.
2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - \$2,000 to \$7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.
2. Creation of a serious hazard to public health or the environment.
3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.
4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - \$500 to \$2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.
2. Substantial non-compliance with the requirements of a compliance schedule.
3. Substantial non-compliance with monitoring and reporting requirements.
4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.
5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to \$500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.
2. Minor violations of compliance schedule requirements.
3. Minor violations of reporting requirements.
4. Illegal discharges not covered in Categories A, B and C.
5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax

benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

**R317-1-9. Electronic Submissions and Electronic Signatures.**

(a) Pursuant to the authority of Utah Code Ann. Subsection 46-4-501(a), the submission of Discharge Monitoring Reports and related information may be conducted electronically through the EPA's NetDMR program, provided the requirements of subsection (b) are met.

(b) A person may submit Discharge Monitoring Reports and related information only after (1) completion of a Subscriber Agreement in a form designated by the Director to ensure that all requirements of 40 CFR 3, EPA's Cross - Media Electronic Reporting Regulation (CROMERR) are met; and (2) completion of subsequent steps specified by EPA's CROMERR, including setting up a subscriber account.

(c) The Subscriber Agreement will continue until terminated by its own terms, until modified by mutual consent or until terminated with 60 days written notice by any party.

(d) Any person who submits a Discharge Monitoring Report or related information under the NetDMR program, and who electronically signs the report or related information, is, by providing an electronic signature, making the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**KEY: water pollution, waste disposal, nutrient limits, effluent standards**  
**February 25, 2016** **19-5**  
**Notice of Continuation October 2, 2012**

**R325. Fair Corporation (Utah State), Administration.****R325-1. Utah State Fair Competitive Exhibitor Rules.****R325-1-1. Exhibitors' Requirements and Guidelines.**

Utah State Fair competitive exhibitors shall comply with the terms of the Exhibitor Entry Form, which constitutes a contract between the Utah State Fair Corporation and the exhibitor. For further guidelines, Exhibitors should refer to the exhibitor handbook which will be mailed to livestock and other department exhibitors for each year's fair, to other potential exhibitors upon request and will be available in Fair office after July 15th.

**R325-1-2. Entry Form and Charge.**

The exhibitor shall complete the entry form provided by the fair administration when entering exhibit items or animals in the fair. The exhibitor entry form may be photocopied for submission, however, the form may not be retyped or reproduced in any other manner. The exhibitor shall pay an entry charge which will be published in the exhibitor handbook. The entry form and charge must be submitted by dates published in the exhibitor handbook. The filing of a signed entry form by the exhibitor constitutes his acceptance of fair department rules and his eligibility for premium prize awards offered by the Utah State Fair Corporation.

**R325-1-3. Claim Checks.**

When an exhibitor in creative arts, home arts, floriculture, fine arts and photography enters exhibits at the fair, the department supervisor shall place entry tags on the exhibits and claim checks shall be furnished to the exhibitor. At the close of the fair, on published release dates, the claim check shall be furnished to the fair by the exhibitor for reclaiming his item. The exhibitor at the time of exhibit release shall sign his entry form. The fair department exhibit supervisor shall also furnish a release permit to the exhibitor which will be checked by a security officer at the entrance gate. Those items entered in the floriculture (015), horticulture (011), and agriculture (012) departments shall become property of the Utah State Fair and will not be returned to exhibitor unless prior approval has been made in writing with the supervisor.

**R325-1-4. Adjudication of Objections.**

(1) A person wishing to petition, object to, or complain about a decision by fair judge(s), the decision of a Fair administrator regarding the enforcement of contest or exhibitor rules, the exhibition of displays, damage to an exhibit, or any other disagreement with fair personnel, shall submit a petition in writing to the fair coordinator or executive director, stating the exact reason for the complaint.

(2) The written complaint shall contain the following information:

(a) the petitioner's name, mailing address, daytime telephone number;

(b) a statement of the exact reason for the complaint and a description of any relief sought.

(3) The petitioner may also include a short statement of facts, reasons, and any appropriate legal authority in support of the written objection/complaint.

(4) The fair coordinator or executive director shall consider the objection/complaint and, if necessary, act within a period of 30 days of its receipt.

(5) Any person aggrieved by a decision made by the director or a Fairpark administrator, may appeal that determination within 30 days, to the Fair Board of Directors by filing a notice of appeal, which shall include the information listed above, plus an explanation of, or reasons for making an appeal.

(6) Actions taken by the board of directors to adjudicate appeals shall be informal-proceedings, and shall be conducted

in accordance with Section 63G-4-203, Utah Code, of the Administrative Procedures Act.

**R325-1-5. View of Forms.**

Upon request, exhibitors may view the official entry forms and judges' forms in the administration office one month after the conclusion of State Fair.

**R325-1-6. Request for New Categories.**

Potential exhibitors requesting new categories or classes for inclusion in the exhibitor handbook shall submit, in writing, a request to the fair coordinator by January 1st. Final action on the request shall be taken by the executive director and/or the board of directors.

**KEY: fairs, rules and procedures****August 19, 1999****Notice of Continuation February 23, 2016****9-4-1103**

**R325. Fair Corporation (Utah State), Administration.****R325-2. Utah State Fair Commercial Exhibitor Rules.****R325-2-1. Applications.**

Potential exhibitors desiring a commercial, non-profit, or educational booth at the Utah State Fair shall complete and submit a commercial space application furnished by the fair with appropriate deposit.

Any pictures or videos taken during the Fair for publicity or for commercial gain must have the approval of the executive director.

**KEY: fairs, rules and procedures**

**June 5, 2000**

**Notice of Continuation February 23, 2016**

**9-4-1103**

**R325-2-2. Selection of Exhibitors.**

(a) Exhibit space lease agreements shall be negotiated with the Commercial Exhibits Supervisor for the use of Fairpark exhibit space on a year by year basis. Space may be awarded or declined based on a need for variety and best-use determined by the Commercial Exhibits Supervisor, executive director and/or board of directors.

(b) The Commercial Exhibit Supervisor, executive director and/or board of directors may elect to renew exhibit space lease agreements for space to those exhibitors desiring to participate in the next succeeding year's fair. Application forms for such selected exhibitors shall be made available in February. Such a renewal is conditioned upon the previous year's exhibitor's fulfillment of the exhibit space lease agreement, adherence to the rules and regulations as outlined in the Commercial Exhibitor Handbook and regardless of the number of years an exhibitor may have participated in prior Utah State Fairs.

(c) Applications from new or prior exhibitors will be accepted after March 20. The Commercial Exhibit Supervisor, executive director and/or board of directors may limit the numbers of similar types of exhibits in order to give Fairpark patrons the most appropriate variety. Such selection decisions shall be unrelated to an exhibitor's products or services involving content of speech matters.

(d) All commercial exhibit applications shall be considered and accepted on a first-come, first served basis by date received and then alphabetically.

(e) In accordance with Section 9-4-1103 (5)(ii) that the Utah State Fair Corporation seek sponsorships for the State Fairpark and for individual buildings or facilities within the Fairpark, the Utah State Fair Corporation may select and sell exclusive sponsorships which may limit commercial exhibit vendors from previous years from participating in the Fair or other times of the year during the period of such exclusive sponsorship. Sponsorships are not governed by Commercial Exhibit rules for renewing exhibitor space leases.

**R325-2-3. Exhibit Space Lease Agreement.**

Each exhibit space requires an Exhibit Space Lease Agreement signed by both the renter and space supervisor. The signing of the agreement with the Utah State Fair Corporation indicates the renter's acceptance of the rules governing the contract which includes the deposit and rent balance to be paid on the date designated in the contract. Failure to honor this rule is grounds for cancellation of exhibit space without refund of deposit. The Exhibit Space Lease Agreement form and rent are revised from year to year and are available at Utah State Fairpark Administration Office.

**R325-2-4. Advertising Material, Petition Signing or Private Business Prohibited Without Lease Agreement.**

(a) No individual, company or organization of any kind may distribute or post advertising materials, solicit signatures for petitions, pass out campaign literature or conduct business of any kind in the Fairpark without a certified exhibit space lease agreement.

(b) Exhibit space lease agreements for space during the State Fair shall not be extended to, nor be made available for the Fairpark parking areas, vehicle entrances or exit areas.

**R325-2-5. Pictures or Videos.**

**R325. Fair Corporation (Utah State), Administration.****R325-3. Utah State Fair Patron Rules.****R325-3-1. Admission Charge.**

Patrons shall pay a gate admission charge upon entrance to the Utah State Fair, of an amount determined annually by the board of directors. The admission charge will be posted at the entrance gates. Gate refunds may be granted to patrons based on extenuating circumstances. Refunds shall not be considered unless the patron submits, in writing, a letter to the executive director, stating the reason(s) for requesting the refund in accordance with the procedures established by Section R325-1-4.

**R325-3-2. Parking.**

A patron parking on the fairpark parking lot shall pay a parking charge. The charge, which is subject to change, shall be posted at the parking lot entrance. The management shall not be responsible for damage to vehicles or theft of property from vehicles.

**R325-3-3. Liability.**

By being granted entrance to the fair, a patron agrees to hold the Utah State Fair Corporation harmless from any liability, cost or expense in connection with or growing out of any claim whatsoever for injury, loss or damage to person or property, as the case may be, resulting from the patron's activities in or upon the fairpark premises, its facilities and appurtenances.

**R325-3-4. Violation of Rules.**

The management reserves the right to remove from the fairpark any person who violates the rules of the Utah State Fair Corporation.

**R325-3-5. Unauthorized Business.**

The fairpark management reserves the right to remove from fairpark property any person or persons distributing advertising material or conducting private business of any kind who does not have an authorized Exhibit Space Lease Agreement.

**R325-3-6. Handling Complaints.**

A patron who feels that he has been mistreated by fairpark personnel, exhibitors, midway and food concession personnel, or others shall submit, in writing, a detailed summary of his complaint for consideration and possible action by the fairpark management and/or board of directors in accordance with the procedures established by Section R325-1-4.

**R325-3-7. Accident Reporting.**

A patron involved in any type of accident while in the fairpark shall contact the fairpark administration office and/or a security officer immediately to request that a security officer complete an official accident report.

**R325-3-8. Pets, Bicycles and Miscellaneous.**

No pets, bicycles, motorcycles, golf carts, skateboards, go-peds or similar items/devices shall be allowed in the fairpark without written approval of the fairpark management. Needs for seeing-eye dogs or pets or equipment required by physician prescription will be considered for possible exceptions.

**R325-3-9. Patron Responsibility.**

A patron purchasing merchandise or entering into contracts with commercial, educational and non-profit exhibitors is responsible for his transactions. The Utah State Fair Corporation shall not assume responsibility for faulty merchandise or for agreements entered into by a patron.

**R325-3-10. Litter.**

A patron shall not litter the fairpark. Trash shall be placed

in barrels provided.

**R325-3-11. Damaging Buildings or Grounds.**

A patron shall not deface the grounds or buildings, outside or inside. Anyone damaging buildings or grounds shall be required to pay all repair and replacement costs.

**R325-3-12. Fires or Flammable Materials.**

No fires or flammable materials are allowed in the fairpark without written approval of fairpark management.

**R325-3-13. Removal of Utah Fair Corporation Property.**

Patrons shall not remove Utah State Fair Corporation property from the buildings and grounds. Flowers and garden crops shall not be removed without permission of fairpark management.

**R325-3-14. Fair Hours.**

A patron shall adhere to the hours of the fairpark which shall be posted at the entrance gates and may be changed yearly.

**R325-3-15. Reviewing Contracts.**

Contractual service agreements negotiated by the Utah State Fair Corporation may be reviewed by an individual with the approval of the executive director.

**R325-3-16. Behavior, Clothing and Actions.**

Fair patrons may be removed from Fair property for the use of foul or abusive language, the wearing of offensive clothing, for offensive actions or intoxication as determined by the executive director, or his representative.

**R325-3-17. Smoke-Free Policy.**

To enhance the family friendly environment and to promote the health and safety of all of our guests, smoking will be limited to designated outdoor areas.

In accordance with the Utah Indoor Clean Air Act, all indoor facilities will be smoke free.

No refund of admission, ticketed events or rent will be issued as a result of this policy.

**KEY: fairs, rules and procedures****August 9, 2010****Notice of Continuation February 23, 2016****9-4-1103**

**R325. Fair Corporation (Utah State), Administration.****R325-4. Interim Patrons Rules (Other Than Utah State Fair).****R325-4-1. Fairpark Hours.**

The fairpark hours shall be 7:30 a.m. to 10:00 p.m. Sunday through Saturday and from 7:00 a.m. to 2:00 a.m. as required by scheduled events. A buildings and grounds representative shall be available either at the maintenance office or in the fairpark. The administration office shall be open from 8:00 a.m. to 5:00 p.m. on weekdays, with the exception of state holidays. The fairpark hours may be subject to change by the executive director.

**R325-4-2. Fairpark Users.**

All users of the fairpark shall have a specific purpose for being on the premises, such as, an employee, event promoter or invited visitor, renter or an individual conducting official business.

**R325-4-3. Trespassing.**

A patron attending a special event in the fairpark shall stay in the immediate area of the event. A patron shall avoid storage areas and other locations in the fairpark where they have no authority to be. A patron shall not trespass in buildings which are not a part of the event, even if buildings are unlocked.

**R325-4-4. Giant Slide.**

A patron shall not be allowed to play on the giant slide in the fairpark unless it is officially open for an event.

**R325-4-5. Parking.**

A patron using the fairpark parking lot shall be required to pay a parking charge, posted at the lot, for events held in the fairpark as required by the administration.

**R325-4-6. Parking Lot Rules.**

The parking lot shall not be used for practice driving, playing or racing, unless such event is contracted for specifically.

**R325-4-7. Litter.**

Patrons shall not litter the fairpark. Trash shall be placed in barrels provided. Patrons shall not be allowed to dump large amounts of personal trash in the barrels.

**R325-4-8. Damaging Buildings or Grounds.**

Patrons shall not deface the grounds or buildings, outside or inside. Anyone damaging buildings or grounds shall be required to pay all repair and replacement cost.

**R325-4-9. Fires or Flammable Materials.**

No fires or flammable materials are allowed in the fairpark without written or verbal approval of fair management.

**R325-4-10. Admission Charge.**

Attendance at an event in the fairpark does not entitle a patron to free admission to other paid events in the fairpark.

**R325-4-11. Agreement Necessary.**

Events shall not be held on the fairpark without a written agreement with the fairpark management.

**R325-4-12. Fairpark Roads.**

Patrons shall observe all traffic signs and the fairpark's speed limit of ten miles-per-hour, or as posted.

**R325-4-13. Liquor Ordinances.**

A patron shall comply with Salt Lake City ordinances with respect to liquor enforcement and dance halls.

**R325-4-14. Removal of Utah Fair Corporation Property.**

A patron shall not remove Utah State Fair Corporation property from the buildings and grounds. Flowers and garden crops shall not be removed without permission from fairpark management.

**R325-4-15. Liability.**

A patron agrees to hold the Utah State Fair Corporation harmless from any liability, cost or expense in connection with or growing out of any claim whatsoever for injury, loss or damage to person or property, as the case may be, resulting from the patron's activities in or upon the fairpark premises, its facilities and appurtenances.

**R325-4-16. Reporting Accidents.**

A patron involved in any type of accident while on the fairpark shall contact the fairpark administration office or Fairpark representative immediately and request that an official accident report be completed.

**R325-4-17. Complaints.**

A patron who feels he has been mistreated by fairpark personnel, event promoter, food concession personnel or others shall submit, in writing, a detailed summary of this complaint for consideration by the fairpark management in accordance with the procedures established by Section R325-1-4.

**R325-4-18. Complaint Against Renter.**

A patron who has a complaint about an event sponsored by a renter, pursuant to the provisions of Section R325-5-1, et seq., shall submit, in writing, a detailed summary of his complaint to the fairpark management for their consideration. Such complaints shall be filed and handled in accordance with the procedures established by Section R325-1-4.

**R325-4-19. Right to Remove From Grounds.**

The fairpark management reserves the right to remove from the grounds any person who uses foul or abusive language, is wearing offensive clothing, makes offensive actions, or is intoxicated as determined by the executive director or his representative, or violates any of the other rules of the Utah State Fair Corporation.

**R325-4-20. Reviewing Contracts.**

Contractual service agreements negotiated by the Utah State Fair Corporation may be reviewed by an individual with the approval of the executive director.

**R325-4-21. Pictures or Videos.**

Any pictures or videos taken in the Fairpark for publicity or for commercial gain must have the approval of the executive director.

**R325-4-22. Smoke-Free Policy.**

In accordance with the Utah Indoor Clean Air Act, all indoor facilities will be smoke free.

No refund of admission, ticketed events or rent will be issued as a result of this policy.

**KEY: fairs, rules and procedures****August 9, 2010****Notice of Continuation February 23, 2016****9-4-1103**

**R325. Fair Corporation (Utah State), Administration.****R325-5. Interim Renters Rules (Other Than Utah State Fair).****R325-5-1. Written Contracts.**

Every event occurring between state fairs on Fairpark property requires a written contract, signed by both the renter/lessee (responsible party) and the executive director, or his designee, to provide for appropriate security, insurance, parking and food arrangements.

**R325-5-2. Rental Agreements.**

Renters shall comply with the terms of rental agreement, which constitutes a contract between the Utah State Fair Corporation and the renter. A rent shall be charged by the Utah State Fair Corporation and this shall be paid by the renter upon signing the agreement. The rent shall be subject to change upon review by the executive director at regular intervals.

**R325-5-3. Trash.**

A renter shall dump trash from his event in barrels provided for that purpose.

**R325-5-4. Fires and Flammable Materials.**

A renter shall not be allowed to build fires or bring flammable materials into the Fairpark without written permission from the fairpark management (except fuel in a vehicle and other normal items for interim event use).

**R325-5-5. Restricted Areas.**

A renter shall avoid fairpark storage areas and other locations on the fairpark where he has no need or authority to be. The renter shall not trespass in buildings which are not a part of his event, even if the buildings are unlocked.

**R325-5-6. Loading and Unloading.**

Unloading and loading shall be done by the renter before or after the hours of the event.

**R325-5-7. Liquor.**

The renter shall comply with and be familiar with Salt Lake City ordinances with respect to intoxicating liquor and dance halls.

**R325-5-8. Food and Beverages.**

The Utah State Fair Corporation retains the rights to all parking, food and beverage concessions. No beer, soft drinks or food are allowed in the fairpark for use at an event, nor is the sale of food or beverages at interim events allowed without the written permission of the fairpark management and Western Food Services, Inc., the authorized food concessionaire at the fairpark.

**R325-5-9. Traffic on Roads.**

The renter shall observe all traffic signs and the fairpark speed limit of ten miles-per-hour.

**R325-5-10. Property Removal.**

A renter shall not remove Utah State Fair Corporation's property from the buildings and grounds. Flowers and garden crops shall not be removed without permission from fairpark management.

**R325-5-11. Horses.**

A horse barn renter shall be allowed to exercise horses in the warm-up ring areas only and then only at the discretion of Fairpark management.

**R325-5-12. Jordan River Parkway Gate Access.**

The Utah State Fair Corporation shall provide access to the

Jordan River Parkway at gate #15 (west side) of the fairpark for entrance to the equestrian trail and the renter may check with fairpark security for gate opening and closing times.

**R325-5-13. Neglected Animals.**

The Utah State Fair Corporation reserves the right to contact the Utah State Department of Agriculture if it appears that a renter's animals stabled in the fairpark are neglected.

**R325-5-14. Pictures or Videos.**

Any pictures or videos taken in the Fairpark for publicity or for commercial gain must have the approval of the executive director, also known as President/CEO.

**R325-5-15. Unauthorized Advertising Material, Petition Signing or Private Business Prohibited Inside Leased Facilities.**

No individual, company or organization of any kind may distribute or post advertising materials, solicit signatures for petitions, pass out campaign literature or conduct business of any kind before, during or after an event inside an event facility, without first obtaining permission from event facility renter/lessee.

**R325-5-16. Advertising Material, Petition Signing or Private Business Prohibited on Fairpark Property.**

No individual, company or organization of any kind may distribute or post advertising materials, solicit signatures for petitions, pass out campaign literature or conduct business of any kind on Fairpark property between state fairs without an authorized event rental agreement.

**R325-5-17. Smoke-Free Policy.**

In accordance with the Utah Indoor Clean Air Act, all indoor facilities will be smoke free.

No refund of admission, ticketed events or rent will be issued as a result of this policy.

**KEY: fairs, rules and procedures****August 9, 2010****Notice of Continuation February 23, 2016****9-4-1103**

**R356. Governor, Criminal and Juvenile Justice (State Commission on).**

**R356-1. Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates.**

**R356-1-1. Authority and Purpose.**

(1) This rule is authorized in accordance with Subsection 64-13e-104(5)(b).

(2) The purpose of this rule is to establish procedures to reimburse counties for incarcerating state probationary inmates or state parole inmates and to determine the rate at which the counties shall be reimbursed.

**R356-1-2. Definitions.**

In addition to terms defined in Section 64-13e-102:

(1) "Total Inmate Days" means the total number of eligible probationary and state parole inmate incarceration days.

(2) "Business Day" means Monday through Friday excluding holidays.

**R356-1-3. Conditions for Reimbursement of State Probationary Inmates.**

Counties shall be eligible for reimbursement for days served in county correctional facilities under the following conditions:

(1) The inmate has been convicted of a felony, and as a condition of probation, has been sentenced to a county correctional facility for a period not exceeding one year. The reimbursement period will begin with the sentencing date.

(2) Days served under Subsection 1 which are eligible for reimbursement may include:

(a) Consecutive felony probation jail sentences, pursuant to Section 76-3-401;

(b) The inmate is sentenced by the courts to a county correctional facility following a violation of felony probation (Order to Show Cause). If the inmate's probation has been terminated it must be reinstated for the county to be eligible for reimbursement;

(c) The inmate is sentenced by the courts to a county correctional facility after a court has formally entered a guilty plea that had been held in abeyance as a conviction.

**R356-1-4. Conditions Not Eligible for Reimbursement of State Probationary Inmates.**

Counties are not eligible for reimbursement for incarcerating inmates in the following circumstances:

(1) Time served in a county correctional facility prior to sentencing, notwithstanding an order from the court for credit for time served;

(2) Time served in a county correctional facility following an unsuccessful termination of probation;

(3) Time served in a county correctional facility under a Plea in Abeyance agreement prior to the entering of the guilty plea as a conviction in the case;

(4) Time served on a felony probation sentence outside a correctional facility on electronic monitoring;

(5) Time served in a county correctional facility on a federal Immigration and Customs Enforcement hold beyond the number of days sentenced to jail by the Courts, even if probation is still in effect;

(6) Time served in a county correctional facility under the jurisdiction of the Juvenile Court;

(7) Time served in a county correctional facility on a probationary 3-day hold.

**R356-1-5. Conditions for Reimbursement of State Parole Inmates.**

(1) Counties shall be eligible for reimbursement for days served in county correctional facilities by state parole inmates

when the inmate is being held on a 3-day hold issued by the Board of Pardons and Parole.

(2) Counties shall be reimbursed for state parole inmates on a 3-day hold for up to 3 business days plus weekends and holidays for a maximum of 6 days of reimbursement per 3 day hold.

**R356-1-6. Conditions for Reimbursement of Felony Offenders Sanctioned in Response to an Individual's Violation of Terms of Probation or Parole.**

(1) Counties may be eligible for reimbursement for time spent by inmates in a county correctional facility as a sanction for a violation of the terms of probation or parole as ordered by the court or the Board of Pardons and Parole.

(2) Reimbursement shall not exceed three consecutive days and shall not exceed five days within a period of 30 days.

**R356-1-7. Monthly Billing Invoices.**

(1) Counties requesting reimbursement for incarcerating state probationary inmates or state parole inmates shall submit, on a monthly basis, the following information in the format specified below in an MS Excel file to CCJJ:

(a) Inmate name (last, first, middle initial);

(b) Inmate date of birth (mm/dd/yyyy);

(c) Sentencing date (mm/dd/yyyy);

(d) Court case number(s) authorizing jail as a condition of probation;

(e) Court location identified by Originating Agency Identifier;

(f) Name of judge assigned to case;

(g) Whether the requested reimbursement is for a 72 hour hold;

(h) UDC offender number if the requested reimbursement is for a 72 hour hold;

(i) Incarceration start date (mm/dd/yyyy);

(j) Release date from correctional facility (mm/dd/yyyy);

(k) Length (number of days) of court-ordered sentence;

(l) Total number of state probationary inmate days of incarceration and total number of state parole inmate days of incarceration for which the county is requesting reimbursement; and

(m) Total number of state inmates (probation and parole) for which the county is requesting reimbursement.

(n) Total number of felony offenders housed pursuant to Subsection 64-13-21(2)(b); and

(o) Total number of days of incarceration of felony offenders housed pursuant to Subsection 64-13-21(2)(b).

(2) Counties shall be reimbursed for all inmate incarceration days (felony probation and felony parole) beginning on the first day of incarceration after sentencing (day of sentencing shall be included), but never the last day of incarceration (day of release). Counties incarcerating inmates beyond eligible sentence days shall only be reimbursed for those days the inmate was eligible for reimbursement.

(3) Monthly billing invoices shall be submitted to CCJJ by the 10th business day of each month unless prior approval has been authorized by the Executive Director of CCJJ or designee. Invoices shall be submitted by email to the following email address: jailreimburse@utah.gov.

(4) CCJJ shall audit each billing invoice for accuracy, using Utah State Courts X-Change program and Department of Corrections Otrack-Ftrack data systems to verify information. When necessary, CCJJ shall contact the correctional facility or sentencing court to verify accuracy of information.

(5) Back billings or late billings are eligible for reimbursement within the same fiscal year period. The 10th business day of August shall be the final day to submit late billings for the previous fiscal year.

(6) For each monthly billing invoice submitted, CCJJ shall



return to the county a copy of the original billing invoice with any corrections that were made to the original billing.

(7) CCJJ may request counties to submit additional information regarding inmate booking and release when necessary to complete invoice audits.

**R356-1-8. Calculation of Payments to Counties for Reimbursement for Housing State Probationary Inmates and State Parole Inmates.**

To ensure compliance with Subsection 64-13e-104(5)(c), CCJJ shall prepare two calculations of payment for counties. CCJJ shall determine which calculation to use based upon funds appropriated by the Legislature for payment.

(1) When funds appropriated by the Legislature are sufficient to reimburse counties at a rate of 50% of the final daily incarceration rate for the preceding fiscal year established pursuant to Section 64-13e-105, the Division of Finance shall reimburse each county that houses a state probationary inmate or state parole inmate at a rate of 50% of the state daily incarceration rate multiplied by the average inmate days of incarceration established in the Administrative Rule Section R356-1-6 for the preceding five fiscal years.

(2) When funds appropriated by the Legislature are not sufficient to reimburse counties under Subsection 64-13e-104(2), each county that houses a state probationary inmate or state parole inmate shall be reimbursed by a rate calculated on a pro rata basis, based on the total inmate days of incarceration that were approved for each county for the preceding five fiscal years. The funds appropriated by the legislature will be divided by the total of inmate days of incarceration of all counties during the previous five years to establish a pro rata rate. Each county shall be reimbursed by multiplying the pro rata rate established under this subsection by the total inmate days of incarceration for each county established in this Administrative Rule Section R356-1-6 for the preceding five fiscal years.

(3) If funds appropriated under Subsection 64-13e-104(2) remain after payments are made pursuant to Subsection 64-13e-104(8), the Division of Finance shall pay a county that houses in its jail a person convicted of a felony who is on probation or parole and who is incarcerated pursuant to Subsection 64-13-21(2)(b) on a pro rata basis not to exceed 50% of the final state daily incarceration rate.

**KEY: jail reimbursement, state probationary inmates, state parole inmates  
February 10, 2016**

**64-13e-104**

**R386. Health, Disease Control and Prevention, Epidemiology.**

**R386-702. Communicable Disease Rule.**

**R386-702-1. Purpose Statement.**

(1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, 26-6-3, and 26-23b.

(2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.

(3) The successes of medicine and public health dramatically reduced the risk of epidemics and early loss of life due to infectious agents during the twentieth century. However, the emergence of diseases such as Middle Eastern Respiratory Syndrome (MERS), and the rapid spread of diseases such as West Nile virus to the United States from other parts of the world, made possible by advances in transportation, trade, food production, and other factors, highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies, and other entities that are partners in protecting the public's health are crucial to maintain and improve the health of the citizens of Utah.

**R386-702-2. Definitions.**

(1) Terms in this rule are defined in Section 26-6-2 and 26-23b-102, except that for purposes of this rule, "Department" means the Utah Department of Health.

(2) In addition, for purposes of this rule:

(a) "Outbreak" means an increase in incidence of disease, or two or more cases of disease with a common exposure.

(b) "Case" means a person identified as having a disease, health disorder, or condition that meets criteria for being reportable under this rule, or that is otherwise under public health investigation.

(c) "Suspect case" means a person who a reporting entity, local health department, or Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

(d) "Good Samaritan" means a person who gives reasonable aid to strangers in grave physical distress.

**R386-702-3. Reportable Diseases, Emergency Illnesses, and Health Conditions.**

(1) The Utah Department of Health declares the following conditions to be of concern to public health and reportable as required or authorized by Section 26-6-6 and Title 26, Chapter 23b of the Utah Health Code.

(a) Acinetobacter species, from any clinical specimen, that is resistant to at least one carbapenem-class antibiotic, or that has demonstrated carbapenemase production

(b) Acquired Immunodeficiency Syndrome

(c) Acute Flaccid Myelitis (AFM)

(d) Adverse event resulting from smallpox vaccination

(e) Anaplasmosis

(f) Anthrax

(g) Arbovirus infection, including Saint Louis encephalitis and West Nile virus infection

(h) Babesiosis

(i) Botulism

(j) Brucellosis

(k) Campylobacteriosis

(l) Chancroid

(m) Chickenpox

(n) Chlamydia trachomatis infection

(o) Cholera

(p) Clostridium difficile, reported via electronic laboratory reporting (ELR) only. Applicable only to laboratories and hospitals currently participating in ELR.

(q) Coccidioidomycosis

(r) Colorado tick fever

(s) Creutzfeldt-Jakob disease and other transmissible human spongiform encephalopathies

(t) Cryptosporidiosis

(u) Cyclospora infection

(v) Cytomegalovirus (CMV), congenital, via ELR (see Utah Administrative Rule R398-4-5 and R386-702-4 (2)(b))

(w) Dengue fever

(x) Diphtheria

(y) Ehrlichiosis, human granulocytic, human monocytic, or unspecified

(z) Encephalitis

(aa)(1) Escherichia coli, from any clinical specimen, that is resistant to at least one carbapenem-class antibiotic, or that has demonstrated carbapenemase production

(aa)(2) Shiga toxin-producing Escherichia coli (STEC) infection

(bb) Enterobacter species, from any clinical specimen, that is resistant to at least one carbapenem-class antibiotic, or that has demonstrated carbapenemase production

(cc) Giardiasis

(dd) Gonorrhea: sexually transmitted and ophthalmia neonatorum

(ee) Haemophilus influenzae, invasive disease

(ff) Hansen Disease (Leprosy)

(gg) Hantavirus pulmonary syndrome (Sin Nombre virus)

(hh) Hemolytic Uremic Syndrome, postdiarrheal

(ii) Hepatitis A

(jj) Hepatitis B, acute, chronic, and perinatal

(kk) Hepatitis C

(ll) Hepatitis, other viral

(mm)(1) Human Immunodeficiency Virus Infection. Special measures for the control of HIV/AIDS are included in R386-702-9.

(nn)(2) Pregnancy in a HIV case

(oo) Influenza-associated hospitalization

(pp) Influenza-associated death, in a person less than 18 years of age

(qq) Klebsiella species, from any clinical specimen, that is resistant to at least one carbapenem-class antibiotic, or that has demonstrated carbapenemase production

(rr) Legionellosis

(ss) Leptospirosis

(tt) Listeriosis

(uu) Lyme Disease

(vv) Malaria

(ww) Measles

(xx) Meningitis (aseptic, bacterial, fungal, parasitic, protozoan, and viral)

(yy) Meningococcal Disease

(zz) Mumps

(aaa) Mycobacteria other than tuberculosis

(bbb) Norovirus, outbreaks only

(ccc) Pertussis

(ddd) Plague

(eee) Poliomyelitis, paralytic and nonparalytic

(fff) Psittacosis

(ggg) Q Fever (Coxiella infection)

(hhh) Rabies, human and animal

(iii) Relapsing fever, tick-borne and louse-borne

(jjj) Rubella, including congenital syndrome

(kkk) Salmonellosis

- (lll) Severe Acute Respiratory Syndrome (SARS)
- (mmm) Shigellosis
- (nnn) Smallpox
- (ooo) Spotted fever rickettsioses (including Rocky Mountain Spotted Fever)
- (ppp) Staphylococcus aureus from any clinical specimen with resistance or intermediate resistance to vancomycin isolated from any site
- (qqq)(1) Streptococcal disease, invasive, due to Streptococcus pneumoniae and Groups A and B isolated from a normally sterile site
- (qqq)(2) Streptococcal disease, invasive, other, reported via ELR only. Applicable only to laboratories and hospitals currently participating in ELR.
- (rrr) Syphilis, all stages and congenital
- (sss) Tetanus
- (ttt) Toxic-Shock Syndrome, staphylococcal or streptococcal
- (uuu) Trichinellosis
- (vvv) Tuberculosis. Special Measures for the Control of Tuberculosis are listed in R388-804.
- (www) Tularemia
- (xxx) Typhoid, cases and carriers
- (yyy) Vibriosis
- (zzz) Viral hemorrhagic fever
- (aaaa) Yellow fever
- (bbbb) Any unusual occurrence of infectious or communicable disease or any unusual or increased occurrence of any illness that may indicate a bioterrorism event or public health hazard, including any single case or multiple cases of a newly recognized, emergent or re-emergent disease or disease-producing agent, including newly identified multi-drug resistant bacteria or a novel influenza strain such as a pandemic influenza strain.
- (cccc) Any outbreak, epidemic, or unusual or increased occurrence of any illness that may indicate an outbreak or epidemic. This includes suspected or confirmed outbreaks of foodborne disease, waterborne disease, meningitis, encephalitis, disease caused by antimicrobial resistant organisms, any infection that may indicate a bioterrorism event, or of any infection that may indicate a public health hazard.
- (2) In addition to the reportable conditions set forth in R386-702-3(1) the Department declares the following reportable emergency illnesses, health conditions, and patient encounter information to be of public health importance and reporting is authorized by Title 26, Chapter 23b, Utah Code, unless made mandatory by the declaration of a public health emergency:
- (a) respiratory illness (including upper or lower respiratory tract infections, difficulty breathing and Adult Respiratory Distress Syndrome);
- (b) gastrointestinal illness (including vomiting, diarrhea, abdominal pain, or any other gastrointestinal distress);
- (c) influenza-like constitutional symptoms and signs;
- (d) neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;
- (e) rash illness;
- (f) hemorrhagic illness;
- (g) botulism-like syndrome;
- (h) lymphadenitis;
- (i) sepsis or unexplained shock;
- (j) febrile illness (illness with fever, chills or rigors);
- (k) nontraumatic coma or sudden death;
- (l) other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin; and
- (m) patient encounter data including, but not limited to, chief complaint and discharge diagnosis data from healthcare settings which support early identification and ruling out of

public health threats, disasters, disease outbreaks, suspected incidents, and acts of bioterrorism; assist in characterizing population groups at greatest risk for disease or injury; support assessment of the severity and magnitude of possible threats; or satisfy syndromic surveillance objectives of the Federal Centers for Medicaid and Medicare Meaningful Use incentive program.

#### **R386-702-4. Reporting.**

(1) Who must report: Each reporting entity shall report each confirmed case, and any individual, who the reporting entity believes, in its professional judgment, is likely to harbor an illness, infection, or condition reportable under R386-702-3(1), and each outbreak, epidemic, or unusual occurrence described in R386-702-3(1)(bbbb) or (cccc) to the local health department or to the Bureau of Epidemiology, Utah Department of Health. Unless otherwise specified, the report of these diseases to the local health department or to the Bureau of Epidemiology, Utah Department of Health shall provide the following information: name, age, sex, address, date of onset, and all other information as prescribed by the Department. A standard report form has been adopted and is supplied to physicians and other reporting entities by the Department. Upon receipt of a report, the local health department shall promptly forward a written or electronic copy of the report to the Bureau of Epidemiology, Utah Department of Health.

(2) Time frames for reporting:

(a) Manual reporting:

(i) Where immediate reporting is required as noted in R386-702-4 (4), the reporting entity shall report as soon as possible, but not later than 24 hours after identification. Immediate reporting shall be made by telephone to the local health department or to the Bureau of Epidemiology, Utah Department of Health at 801-538-6191 or 888-EPI-UTAH (888-374-8824).

(ii) All diseases not required to be reported immediately shall be reported within three working days from the time of identification. Reporting entities shall send reports to the local health department by phone, secured fax, secured email, or mail; or to the Bureau of Epidemiology by phone (801-538-6191), secured fax (801-538-9923), secured email (please contact the Bureau of Epidemiology at 801-538-6191 for information on this option), or by mail (288 North 1460 West, P. O. Box 142104, Salt Lake City, Utah 84114-2104).

(b) Electronic reporting:

(i) Hospitals and laboratories are encouraged to report case information electronically in a manner approved of by the Department if the laboratory has the capacity to do so. Refer to <https://health.utah.gov/phaccess/public/elr/> for information about this option. Please contact the Bureau of Epidemiology at 801-538-6191 for questions regarding this option.

(ii) When more than one licensed laboratory or hospital is involved in testing a specimen, all entities involved are required to report results.

(iii) All entities that report electronically shall either choose to report on demand (as each report is released) or batch reports every 24 hours (including holidays and weekends if the entity is open).

(iv) The following requirements apply to laboratories that are reporting information electronically:

(1) Laboratories reporting electronically shall send the following information with all reports:

(A) First and last name of the patient;

(B) Patient date of birth;

(C) Patient hospitalization status;

(D) Name of the reporting facility;

(E) Name of the testing laboratory;

(F) Patient address (including street address, unit/apartment number, city, state, and zip code);

(G) Name and phone number of the requesting health care

provider;

- (H) Pregnancy status;
- (I) Specimen source;
- (J) The laboratory's name for, or description of, the test;
- (K) Testing results;
- (L) Test reference range; and
- (M) Test status (e.g. preliminary, final, amended and/or corrected).

(2) Hospitals reporting electronically shall use HL7 2.5.1 message structure and standard LOINC and SNOMED terminology in accordance with Meaningful Use regulations. Laboratories reporting electronically shall use HL7 2.3.1 or 2.5.1 message structure for all fields and appropriate LOINC codes designating the test performed.

(3) Laboratories reporting electronically shall submit all local vocabulary codes with translations to UDOH, if applicable.

(4) Laboratories reporting electronically must report preliminary positive results for immediately notifiable conditions as specified in R386-702-4 (4).

(c) Electronic reporting of negative results:

(i) Electronic reporting shall include negative as well as positive results for the following conditions:

- (1) Chlamydia
- (2) Cytomegalovirus (CMV), congenital (see Utah Administrative Rule R398-4-5 and R386-702-4 (2)(b)(i))
- (3) Gonorrhea
- (4) Hepatitis A
- (5) Hepatitis B
- (6) Hepatitis C, including viral loads
- (7) Human Immunodeficiency Virus (HIV), including viral loads and confirmatory tests
- (8) Lyme disease
- (9) Syphilis
- (10) Tuberculosis

(ii) Negative test results reported for these conditions will be used for the following purposes as authorized in Utah Health Code Section 26-1-30(2)(c),(d), and (f):

(1) To determine when a previously reported case becomes non-infectious;

(2) To identify newly acquired infections through identification of a seroconversion window; or

(3) To provide information critical for assignment of a case definition.

(iii) Information associated with a negative test result will be retained by the Utah Department of Health for a period of 18 months.

(1) At the end of the 18 month period, if the result has not been appended to an existing case, personal identifiers will be stripped and expunged from the result.

(2) The de-identified result will be added to a de-identified, aggregate dataset which will be retained for use by public health to analyze trends associated with testing patterns and case distribution, enabling identification and establishment of prevention and intervention efforts for at-risk populations, and assessment of trends over time in those populations, as authorized by Utah Health Code 26-1-30(2)(f).

(3) Entities Required to Report Communicable Diseases: Title 26, Chapter 6, Section 6 Utah Code lists those individuals and facilities required to report diseases known or suspected of being communicable.

(a) Physicians, hospitals, health care facilities, home health agencies, health maintenance organizations, and other health care providers shall report details regarding each case.

(b) Schools, child care centers, and citizens shall provide any relevant information.

(c) Laboratories and other testing sites shall report laboratory evidence of any of the reportable diseases. Laboratories and other testing sites shall also report any test result that provides presumptive evidence of infection, which

may include positive tests for HIV, syphilis, measles, viral hepatitis, and tuberculosis. This would also include reporting ordered tests for Creutzfeldt-Jakob disease and other prion diseases.

(i) Detailed lists of reportable laboratory events, e.g. laboratory tests and results that signify a reportable condition, are found at: <https://health.utah.gov/phaccess/public/elr/>; click on "Spreadsheet of Reportable Events and Vocabulary" to access this list.

(ii) Events noted within the "Spreadsheet of Reportable Events and Vocabulary" constitute those that are reportable according to this Rule, and as such are considered mandatory for laboratories to report.

(iii) The "Spreadsheet of Reportable Events and Vocabulary" defines, for laboratory reporting purposes, those unusual occurrences of conditions as noted in R386-702-3 (1)(bbbb) and (cccc).

(d) Pharmacists shall report unusual prescriptions or patterns of prescribing as specified in section 26-23b-105.

(4) Immediately Reportable Conditions: Case and suspect case reports of anthrax, botulism (except for infant botulism), cholera, Creutzfeldt-Jakob disease and other suspected prion diseases, diphtheria, Haemophilus influenzae (invasive disease), hepatitis A, measles, meningococcal disease, plague, poliomyelitis, rabies, rubella (excluding congenital syndrome), Severe Acute Respiratory Syndrome (SARS), smallpox, Staphylococcus aureus with resistance (VRSA) or intermediate resistance (VISA) to vancomycin isolated from any site, tuberculosis, tularemia, typhoid, viral hemorrhagic fever, yellow fever, and any condition described in R386-702-3(1)(bbbb) or (cccc) are to be made immediately as provided in R386-702-4(2).

(5) Mandatory Submission of Clinical Material:

(a) Laboratories shall submit clinical material from all cases identified with organisms listed in (5)(c) below to the Utah Department of Health, Utah Public Health Laboratory (UPHL). Clinical material is defined as:

(i) A clinical isolate containing the infectious organism for which submission of material is required, or

(ii) If an isolate is not available, material containing the infectious organism for which submission of material is required, in the following order of preference:

- (A) a patient specimen;
- (B) nucleic acid; or
- (C) other laboratory material.

(b) Laboratories should alert UPHL via telephone during business hours at (801) 965-2400, or after hours at (801) 560-6586, of all bioterrorism (BT) agents that are being submitted. BT agents are marked below (as (BT)) with other organisms mandated for submission.

(c) Organisms that are mandated for clinical submission in Utah include:

- (i) Bacillus anthracis (BT);
- (ii) Brucella species (BT);
- (iii) Campylobacter species;
- (iv) Clostridium botulinum (BT);
- (v) Corynebacterium diphtheriae;
- (vi) Shiga toxin-producing Escherichia coli (STEC) (including enrichment and/or MacConkey broths that tested positive by enzyme immunoassay for Shiga toxin);
- (vii) Francisella tularensis (BT);
- (viii) Haemophilus influenzae, from normally sterile sites;
- (ix) Influenza virus (hospitalized cases only);
- (x) Legionella species;
- (xi) Listeria monocytogenes;
- (xii) Measles (rubeola);
- (xiii) Mycobacterium tuberculosis complex;
- (xiv) Neisseria gonorrhoeae;
- (xv) Neisseria meningitidis, from normally sterile sites;

(xvi) *Salmonella* species;  
 (xvii) *Shigella* species;  
 (xviii) *Staphylococcus aureus* with resistance or intermediate resistance to vancomycin isolated from any site;  
 (xix) *Vibrio* species;  
 (xx) West Nile virus;  
 (xxi) *Yersinia* species (*Yersinia pestis*, BT); and  
 (xxii) any organism implicated in an outbreak when instructed by authorized local or state health department personnel.

(6) Full reporting of all relevant patient information related to laboratory-confirmed influenza is authorized and may be required by local or state health department personnel for purposes of public health investigation of a documented threat to public health.

(7) Reports of emergency illnesses, health conditions, and patient encounter information under R386-702-3(2) shall be made as soon as practicable using a process and schedule approved by the Department. Full reporting of all relevant patient information is authorized. The report shall include at least, if known:

- (a) name of the facility;
- (b) a patient identifier;
- (c) date of visit;
- (d) time of visit;
- (e) patient's age;
- (f) patient's sex;
- (g) zip code of patient's residence;
- (h) chief complaint(s), reason for visit, and/or diagnosis;

and

- (i) whether the patient was admitted to the hospital.

(8) An entity reporting emergency illnesses, health conditions, and patient encounter information under R386-702-3(2) is authorized to report on other encounters during the same time period that do not meet definition for a reportable emergency illness, health condition, or patient encounter. Submission of an isolate does not replace the requirement to report the case also to the local health department or Bureau of Epidemiology, Utah Department of Health. The report shall include the following information for each such encounter:

- (a) facility name;
- (b) date of visit;
- (c) time of visit;
- (d) patient's age;
- (e) patient's sex; and
- (f) patient's zip code for patient's residence.

(9) Epidemiological Review: The Department or local health department may conduct an investigation, including review of the hospital and health care facility medical records and contacting the individual patient to protect the public's health.

(10) Confidentiality of Reports:

(a) All reports required by this rule are confidential and are not open to public inspection. All information collected pursuant to this rule may not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

(b) Nothing in this rule precludes the discussion of case information with an attending clinician or public health workers.

(c) Good Samaritans:

(i) The Department or local health department shall disclose communicable disease-related information regarding the person who was assisted to the medical provider of a good Samaritan when that medical provider submits a request to the Department or local health department. The request must include:

- (A) information regarding the occurrence of the accident, fire, or other life-threatening emergency,
- (B) a description of the exposure risk to the good

Samaritan, and

(C) contact information for the good Samaritan and their medical provider.

(ii) Information shall be provided to the medical provider of the good Samaritan only in order to ensure that:

(A) appropriate education and follow-up is provided, and

(B) confidentiality is maintained for the person who was aided.

(iii) No identifying information will be shared regarding the person who was assisted with the good Samaritan or their medical provider. The good Samaritan shall receive written information warning them that information regarding the person who was assisted is protected by state law.

(11) If public health conducts a retrospective surveillance project, such as to assess completeness of case finding or assess another measure of data quality, the department may, at its discretion, waive any penalties for participating facilities, medical providers, laboratories, or other reporters if cases are found that were not originally reported for whatever reason.

### **R386-702-5. General Measures for the Control of Communicable Diseases.**

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) General Control Measures for Reportable Diseases.

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the Bureau of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the Bureau of Epidemiology, Utah Department of Health or official reference listed in R386-702-12.

(3) Prevention of the Spread of Disease From a Case.

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) Prevention of the Spread of Disease or Other Public Health Hazard.

A case, suspected case, carrier, contact, other person, or entity (e.g. facility, hotel, organization) shall, upon request of a public health authority, promptly cooperate during:

(a) An investigation of the circumstances or cause of a case, suspected case, outbreak, or suspected outbreak.

(b) The carrying out of measures for prevention, suppression, and control of a public health hazard, including, but not limited to, procedures of restriction, isolation, and

quarantine.

(5) Public Food Handlers.

A person known to be infected with a communicable disease that can be transmitted by food or drink products, or who is suspected of being infected with such a disease, may not engage in the commercial handling of food or drink products, or be employed on any premises handling those types of products, unless those products are packaged off-site and remain in a closed container until purchased for consumption, until the person is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(6) Communicable Diseases in Places Where Food or Drink Products are Handled or Processed.

If a case, carrier, or suspected case of a disease that can be conveyed by food or drink products is found at any place where food or drink products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these food or drink products, the local health department may immediately prohibit the sale, or removal of drink and all other food products from the premises. Sale or distribution of food or drink products from the premises may be resumed when measures have been taken to eliminate the threat to health from the product and its processing as prescribed by R392-100.

(7) Request for State Assistance.

If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the Bureau of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(8) Approved Laboratories.

Laboratory analyses that are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

**R386-702-6. Special Measures for Control of Rabies.**

(1) Rationale of Treatment.

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite, regardless of vaccination status, as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was appropriately vaccinated against rabies before the incident, the

animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-6(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-6(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the Bureau of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the Bureau of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-6(2)(e) may be waived by the Bureau of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of 180 days. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least six months and vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-6(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops

in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-6(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Testing Fees at Utah Public Health Laboratory (UPHL).

(a) Animals being submitted to UPHL for rabies testing must follow criteria defined in The Compendium of Animal Rabies Prevention and Control to be eligible for testing without a fee. Testing of animals that fit this criteria will be eligible for a waived fee for testing. Testing of animals that do not meet this criteria will incur a testing fee as set forth by UPHL.

(b) The following situations will not incur a rabies testing fee if testing is ordered for them through UPHL:

(i) Any bat in an instance where a person or animal has had an exposure, or reasonable probability of exposure, including, but not limited to: known bat bites, exposure to bat saliva, a bat found in a room with a sleeping person or unattended child, or a bat found near a child or mentally impaired or intoxicated person.

(ii) Dogs, cats, or ferrets, regardless of rabies vaccination status, if signs suggestive of rabies are documented in them.

(iii) Wild mammals and hybrids that expose persons, pets, or livestock (e.g., skunks, foxes, coyotes, and raccoons) may be tested.

(iv) Livestock may be tested if signs suggestive of rabies are documented.

(v) UDOH Bureau of Epidemiology staff are available to discuss additional situations that may warrant testing at (801) 538-6191.

(c) The following situations will incur a \$95 testing fee if testing is ordered for them through UPHL:

(i) Any stray with unknown or undocumented vaccination history that exposes a person, if signs suggestive of rabies are not documented, or if the animal has not been confined and observed for at least 10 days.

(ii) Dogs, cats, and ferrets: currently vaccinated animals that expose a person, if signs suggestive of rabies are not documented, or animals have not been confined and observed for at least 10 days.

(iii) Regardless of rabies vaccination status, a healthy dog, cat, or ferret that has not exposed a person.

(iv) Small rodents (e.g., rats, mice, squirrels, chipmunks, voles, or moles) and lagomorphs (rabbits and hares).

(v) Incomplete paperwork accompanying the sample will also result in a fee for testing; a thorough description of the situation must be included with each sample submission.

(vi) UDOH Bureau of Epidemiology staff are available to discuss additional situations that may not warrant testing at (801) 538-6191.

(d) If the submitting party feels they are charged inappropriately for rabies testing, they may send a letter describing the situation and requesting a waiver for fees to: Utah Department of Health, Bureau of Epidemiology, P.O. Box 142104, Salt Lake City, UT 84114, attention: Zoonotic Diseases Epidemiologist. Information may be submitted electronically via email to: [epi@utah.gov](mailto:epi@utah.gov), with a note in the subject line

"Attention: Zoonotic Diseases Epidemiologist".

(i) The submitting party has 30 days from receipt of the testing fee invoice to file an appeal. The letter must include copies of the original paperwork that was submitted, and a copy of the invoice received, for a waiver to be considered.

(ii) UDOH and UPHL have 30 days to review information after receipt of an appeal request to make an official decision and notify the submitter.

(iii) UDOH Bureau of Epidemiology staff are available to discuss questions about testing fees and the appeal process at (801) 538-6191.

(4) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-12(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Bureau of Epidemiology, Utah Department of Health.

(b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine to the Bureau of Epidemiology, Utah Department of Health, using the process described in R386-702-4.

(c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-12(3), is the reference document for animal vaccine use.

(d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

(e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

(f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

(g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(5) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;

(ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly

destroyed.

#### **R386-702-7. Special Measures for Control of Typhoid.**

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Standard precautions are required during hospitalization. Use contact precautions for diapered or incontinent patients for the duration of illness. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on three or more negative cultures of feces (and of urine in patients with schistosomiasis) taken at least 24 hours apart. Cultures must have been taken at least 48 hours after antibiotic therapy has ended and not earlier than one month after onset of illness as specified in R386-702-7(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained as specified in R386-702-7(6). The patient shall be restricted from food handling, child care, and from providing patient care during the period of supervision by the local health department.

(3) Contacts: Administration of typhoid vaccine is recommended for all household members of known typhoid carriers. Household and close contacts of a carrier shall be restricted from food handling, child care, and patient care until two consecutive negative stool specimens, taken at least 24 hours apart, are submitted, or when approval is granted by the local health officer according to local jurisdiction.

(4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the Bureau of Epidemiology, Utah Department of Health using the process described in R386-702-4. Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling, child care, and patient care until released in accordance with R386-702-7(4)(a) or R386-702-7(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).

(a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-7(6).

(b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the Bureau of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-7(6).

(5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the Bureau of Epidemiology, and shall:

- (a) Require the necessary laboratory tests for release;
- (b) Issue written instructions to the carrier;
- (c) Supervise the carrier.
- (6) Requirements for Release of Convalescent and Chronic

Carriers: The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state; or

(d) the local health officer or his representative determines the carrier no longer presents a risk to public health according to the evaluation of other factors.

#### **R386-702-8. Special Measures for the Control of Ophthalmia Neonatorum.**

Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

#### **R386-702-9. Special Measures for the Control of HIV/AIDS.**

(1) Authority for this section is established by Title 26, Chapter 6, Sections 3 and 3.5 of the Utah Communicable Disease Control Act. This section establishes requirements for:

(a) General reporting of screening, diagnostic, and treatment test results related to Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS).

(b) Partner identification and notification.

(2) Reporting of HIV and AIDS:

(a) A health care provider who administers or causes to have administered any of the following tests shall report all positive and indeterminate results (preliminary and confirmatory) to the Department or the local health department:

(i) Presence of antibodies to HIV;

(ii) Presence of HIV antigen;

(iii) Isolation of HIV;

(iv) Demonstration of HIV pro-viral DNA;

(v) Demonstration of HIV specific nucleic acids;

(vi) HIV viral load determination;

(vii) Any other test or condition indicative of HIV infection; and

(viii) CD4+ T-Lymphocyte tests, regardless of known HIV status.

(b) A laboratory that analyzes samples for any of the tests listed in R386-702-9(2)(a) shall report all results to the Department or the local health department.

(i) Specific electronic reporting requirements are described in R386-702-4(2)(b).

(c) Reports shall include, as available:

(i) First and last name of the patient;

(ii) Patient date of birth;

(iii) Sex;

(iv) Race;

(v) Occupation;



- (vi) Patient phone number;
- (vii) Patient hospitalization status;
- (viii) Name and telephone number of the reporting facility;
- (ix) Name and telephone number of the testing laboratory;
- (x) Patient home and work address;
- (xi) Name, address, and phone number of the requesting health care provider;
- (xii) Specimen source;
- (xiii) Testing results;
- (xiv) Laboratory's name for, or description of, the test;
- (xv) Test reference range; and
- (xvi) Test status (e.g. preliminary, final, amended and/or corrected).

(d) Reports may be made via ELR, or in writing, by telephone, or by other electronic means acceptable to the Department as described in R386-702-4(2).

(3) Partner identification and notification: if an individual is tested and found to have an HIV infection, the Department and/or local health department shall provide partner services, linkage-to-care activities, and promote retention to HIV care.

(a) Definitions:

(i) "Partner" is defined as any individual, including a spouse, who has shared needles, syringes, or drug paraphernalia or who has had sexual contact with an HIV infected individual.

(ii) "Spouse" is defined as any individual who is the marriage partner of that person at any time within the ten-year period prior to the diagnosis of HIV infection.

(iii) "Linkage to care" is defined by a reported CD4+ T-Lymphocyte test and/or HIV viral load determination within three months of HIV positive diagnosis.

(iv) "Retention to care" is defined by a reported CD4+ T-Lymphocyte test or HIV viral load determination twice within a 12-month period and at least three months apart.

(b) Partner services include:

(i) Confidential partner notification within 30 days of receiving a positive HIV result;

(ii) Prevention counseling;

(iii) Testing for HIV;

(iv) Providing recommendations for testing for other sexually transmitted diseases;

(v) Providing recommendations for hepatitis screening and vaccination;

(iv) Treatment or linkage to medical care within three months of HIV diagnosis; and

(v) Linkage or referral to other prevention services and support.

(4) A university or hospital that conducts research studies exempt from reporting AIDS and HIV infection under Section 26-6-3.5 shall submit the following to the Department:

(a) A summary of the research protocol including funding sources and justification for requiring anonymity;

(b) Written approval of the Utah Department of Health institutional review board; and

(c) A final report indicating the number of HIV positive and HIV negative individuals enrolled in the study.

#### **R386-702-10. Special Measures to Prevent Perinatal and Person-to-Person Transmission of Hepatitis B Infection.**

(1) A licensed healthcare provider who provides prenatal care shall routinely test each pregnant woman for hepatitis B surface antigen (HBsAg) at an early prenatal care visit. The provisions of this section do not apply if the pregnant woman, after being informed of the possible consequences, objects to the test on the basis of religious or personal beliefs.

(2) The licensed healthcare provider who provides prenatal care should repeat the HBsAg test during late pregnancy for those women who tested negative for HBsAg during early pregnancy, but who are at high risk based on:

(a) evidence of clinical hepatitis during pregnancy;

(b) injection drug use;

(c) occurrence during pregnancy or a history of a sexually transmitted disease;

(d) occurrence of hepatitis B in a household or close family contact; or

(e) the judgment of the healthcare provider.

(3) In addition to other reporting required by this rule, each positive HBsAg result detected in a pregnant woman shall be reported to the local health department or the Utah Department of Health, as specified in Section 26-6-6. That report shall indicate that the woman was pregnant at time of testing if that information is available to the reporting entity.

(4) A licensed healthcare provider who provides prenatal care shall document a woman's HBsAg test results, or the basis of the objection to the test, in the medical record for that patient.

(5) Every hospital and birthing facility shall develop a policy to assure that:

(a) when a pregnant woman is admitted for delivery, or for monitoring of pregnancy status, the result from a test for HBsAg performed on that woman during that pregnancy is available for review and documented in the hospital record;

(b) when a pregnant woman is admitted for delivery, if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg as soon as possible, but before discharge from the hospital or birthing facility;

(c) if a pregnant woman who has not had prenatal care during that pregnancy is admitted for monitoring of pregnancy status only, and if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg status before discharge from the hospital or birthing facility;

(d) positive HBsAg results identified by testing performed or documented during the hospital stay are reported as specified in this rule;

(e) infants born to HBsAg positive mothers receive hepatitis B immune globulin (HBIG) and hepatitis B vaccine, administered at separate injection sites, within 12 hours of birth;

(f) infants born to mothers whose HBsAg status is unknown receive hepatitis B vaccine within 12 hours of birth, and if the infant is born preterm with birth weight less than 2,000 grams, that infant also receives HBIG within 12 hours; and

(g) if at the time of birth the mother's HBsAg status is unknown and the HBsAg test result is later determined to be positive, that infant receives HBIG as soon as possible but within 7 days of birth.

(h) hepatitis B immune globulin (HBIG) administration and birth dose hepatitis B vaccine status of infants born to mothers who are HBsAg-positive, or whose status is unknown, are reported within 24 hours of delivery to the local health department and Utah Department of Health Immunization Program at (801) 538-9450.

(6) Local health departments shall perform the following activities or assure that they are performed:

(a) All females between the ages of 12 and 50 years at the time an HBsAg positive test result is reported will be screened for pregnancy status within one week of receipt of that lab result.

(b) Infants born to HBsAg positive mothers complete the hepatitis B vaccine series as specified in the most current version of "The Red Book" as cited in R386-702-13 (4).

(c) Children born to HBsAg positive mothers are tested for HBsAg and antibody against hepatitis B surface antigen (anti-HBs) at 9 to 18 months of age (testing is done at least one month after the final dose of hepatitis B vaccine series is administered, and no earlier than 9 months of age) to monitor the success of therapy and identify cases of perinatal hepatitis B infection.

(i) Children who test negative for HBsAg and do not demonstrate serological evidence of immunity against hepatitis

B when tested as described in (c) receive additional vaccine doses and are retested as specified in the most current version of "The Red Book" as cited in R386-702-13 (4).

(d) HBsAg positive mothers are advised regarding how to reduce their risk of transmitting hepatitis B to others.

(e) Household members and sex partners of HBsAg positive mothers are evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, are offered or advised to obtain vaccination against hepatitis B.

(f) All identified acute hepatitis B cases shall be investigated by the local health department, and identified household and sexual contacts shall be advised to obtain vaccination against hepatitis B.

(7) The provisions of subsections (5) and (6) do not apply if the pregnant woman or the child's guardian, after being informed of the possible consequences, objects to any of the required procedures on the basis of religious or moral beliefs. The hospital or birthing facility shall document the basis of the objection.

(8) Prevention of transmission by individuals with chronic hepatitis B infection.

(i) HBsAg positive, and total antibody against hepatitis B core antigen (anti-HBc) positive (if done) and IgM anti-HBc negative; or

(a) An individual with chronic hepatitis B infection should be advised regarding how to reduce the risk that the individual will transmit hepatitis B to others.

(b) Household members and sex partners of individuals with chronic hepatitis B infection should be evaluated to determine susceptibility to hepatitis B infection, and if determined to be susceptible, should be offered or advised to obtain vaccination against Hepatitis B.

#### **R386-702-11. Public Health Emergency.**

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Title 26, Chapter 21, Utah Code, that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily.

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-4.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in R386-702-4 and shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age;

(e) patient's sex;

(f) patient's zip code for patient's residence.

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

(6) Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

#### **R386-702-12. Penalties.**

Any person who violates any provision of R386-702 may be assessed a penalty as provided in Section 26-23-6.

#### **R386-702-13. Official References.**

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

(1) American Public Health Association. "Control of Communicable Diseases Manual". 20th ed., Heymann, David L., editor, 2015.

(2) Centers for Disease Control and Prevention. "Human Rabies Prevention---United States, 2008: Recommendations of the Advisory Committee on Immunization Practices." *Morbidity and Mortality Weekly Report*. 57 (RR03) (2008):1-26, 28.

(3) National Association of State Public Health Veterinarians Committee. "Compendium of Animal Rabies Prevention and Control, 2011." *Nasphv.org*. National Association of State Public Health Veterinarians, 31 May 2011. Web. <http://nasphv.org/Documents/RabiesCompendium.pdf>

(4) American Academy of Pediatrics. "Red Book: 2012 Report of the Committee on Infectious Diseases" 30th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2015.

(5) National Association of State Public Health Veterinarians Animal Contact Compendium Committee 2013. "Compendium of Measures to Prevent Disease Associated with Animals in Public Settings, 2013." *Journal of the American Veterinary Medicine Association* 243 (2013): 1270-288.

**KEY: communicable diseases, quarantines, rabies, rules and procedures**

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Notice of Continuation October 12, 2011

26-6-3  
26-23b

**R410. Health, Health Care Financing.****R410-14. Administrative Hearing Procedures.****R410-14-1. Introduction and Authority.**

(1) This rule sets forth the administrative hearing procedures for the Division of Medicaid and Health Financing.

(2) This rule is authorized by Section 26-1-24, Section 63G-4-102, 42 U.S.C. 1396(a)(3), and 42 CFR 431, Subpart E.

**R410-14-2. Definitions.**

(1) The definitions in Rule R414-1 and Section 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means a denial, termination, suspension, or reduction of medical assistance for a recipient, or a reduction, denial or revocation of reimbursement for services for a provider; or a denial or termination of eligibility for participation in a program, or as a provider. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a state with regard to the preadmission screening and annual resident review requirements of Section 1919(e)(7) of the Social Security Act.

(b) "Adverse determination" means a determination made in accordance with Sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Social Security Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

(c) "Agency" means Division of Medicaid and Health Financing (DMHF) within the Department of Health, the Department of Human Services (DHS), the Department of Workforce Services (DWS) or any managed health care organization (MCO) that has conducted or performed an action as defined in this rule.

(d) "Aggrieved person" means any recipient, enrollee, or provider who is affected by an action or inaction of an agency.

(e) "CHEC" means Child Health Evaluation and Care program, which is Utah's version of the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Medicaid child health program.

(f) "De novo" means anew, or considering the question of a case for the first time.

(g) "DHS" means the Department of Human Services.

(h) "DOH" means the Department of Health.

(i) "DWS" means the Department of Workforce Services.

(j) "Eligibility Agency" means DWS or DHS or any entity the Agency contracts with to determine medical assistance eligibility.

(k) "Ex Parte" communications mean direct or indirect communication in connection with an issue of fact or law between the hearing officer and one party only.

(l) "Grievance" means an expression of dissatisfaction about any matter other than an action as defined in this rule. Grievances may include but are not limited to the quality of care of services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee or failure to respect the rights of an enrollee of an MCO.

(m) "Grievance system" means the overall system that includes grievances and appeals handled by an MCO and access to the administrative hearing process set out in this rule.

(n) "Hearing Officer" means solely any person designated by the DMHF Director to conduct administrative hearings pursuant to this rule.

(o) "Managed Care Organization" or "MCO" means a health maintenance organization, a prepaid mental health plan or a dental managed care plan that contracts with DMHF to provide health, behavioral health or oral health services to Medicaid or CHIP recipients.

(p) "Medical record" means a record that contains medical data of a medical assistance recipient or enrollee.

(q) "Provider" means any person or entity that is licensed and otherwise authorized to furnish health care to medical assistance recipients or medical assistance MCO enrollees.

(r) "Order" means a ruling by a hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

(s) "Scope of service" means medical, oral or behavioral health services set out under R414 as a covered benefit.

(t) "State fair hearing" means an administrative hearing conducted pursuant to this rule.

**R410-14-3. Administrative Adjudicative Procedures.**

(1) Except as provided in this rule or as otherwise designated by rule or statute or converted pursuant to Subsection 63G-4-202(3), all adjudicative proceedings conducted pursuant to this rule are informal proceedings.

(2) Request for Agency Action. An aggrieved person may file a written request for agency action pursuant to Utah Code Ann. Section 63G-4-201, and in accordance with this rule.

(a) A provider may file a written request for agency action without the consent of the recipient or MCO enrollee if the request for agency action pertains to the denial of an authorization for service or a denial of payment on a claim.

(b) A provider may not file a request for agency action if the request for agency action pertains to the denial, change or termination of eligibility of a member or enrollee for a medical assistance program.

(3) If a medical issue is in dispute, each request shall include supporting medical documentation. DMHF shall schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.

(4) Notice of Agency Action.

(a) An agency shall provide a written notice of action or adverse action to each aggrieved person. Such actions include but are not limited to:

(i) eligibility for assistance;

(ii) scope of service;

(iii) denial or limited prior authorization of a requested service including the type or level of service; and

(iv) payment of a claim.

(b) The notice must include:

(i) a statement of the action the agency intends to take;

(ii) the date the intended action becomes effective;

(iii) the reasons for the intended action;

(iv) the specific regulations that support the action, or the change in federal law, state law or DMHF policy which requires the action;

(v) the right to request a hearing;

(vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and

(vii) if applicable, an explanation of the circumstances under which reimbursement for medical services will continue or may be reinstated pursuant to this rule.

(c) The agency shall mail the notice at least 10 calendar days before the date of the intended action except:

(i) the agency may mail the notice not later than the date of action in accordance with 42 CFR 431.213;

(ii) the agency may shorten the period of advance notice to five days before the date of action if it has facts that indicate it must take action due to probable fraud by the recipient or provider and the facts have been verified by affidavit.

**R410-14-4. Hearings.**

(1) DMHF shall conduct informal hearings for all issues except those specifically designated as formal hearings by this rule. The hearing officer may convert the proceeding to a

formal hearing if an aggrieved person requests a hearing that meets the criteria set forth in Section 63G-4-202.

(2) If a hearing under this rule is converted to a formal hearing pursuant to Section 63G-4-202, the formal hearing shall be conducted in accordance with these rules except as otherwise provided in Sections 63G-4-204 through 63G-4-208 or other applicable statutes.

(3) DMHF shall conduct a hearing in connection with an agency action if the Aggrieved Person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the hearing officer may deny a request for an evidentiary hearing and issue a recommended decision without a hearing based on the record. In the recommended decision, the hearing officer shall specifically set out all material and relevant facts that are not in dispute.

(4) There is no disputed issue of fact if the Aggrieved Person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(5) If the Aggrieved Person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

(6) An MCO may not require an Aggrieved Person to utilize arbitration or mediation in order to resolve an Action. An Aggrieved Person may file a request for hearing relating to an Action regardless of any contractual provision with an MCO which may require arbitration or mediation.

(7) The hearing officer may not grant a hearing if the issue is a state or federal law requiring an automatic change in eligibility for medical assistance or covered services that affect the Aggrieved Person.

#### **R410-14-5. Request for Hearing.**

(1) An aggrieved person shall request a hearing by submitting the request on the DMHF "Request for Hearing/Agency Action" form. The aggrieved person must then mail or fax the form to the address or fax number contained on the Notice of Agency Action or Request for Hearing Form. The request must explain why the aggrieved person is seeking agency relief.

(2) Hearings must be requested within the following deadlines:

(a) A medical assistance provider or recipient must request a hearing within 30 calendar days from the date that DMHF sends written notice of its intended action.

(b) A medical assistance recipient must request a hearing with DWS regarding eligibility for medical assistance within 90 calendar days from the date that the agency sends written notice of its intended action.

(c) A medical assistance recipient must request a hearing with DMHF regarding a determination of disability for the purposes of medical assistance eligibility within 90 calendar days from the date that DMHF sends written notice of its intended action.

(d) A medical assistance recipient must request a hearing regarding approval or denial of a scope of service within 30 calendar days from the date the agency sends written notice of its intended action.

(3) A hearing request that an aggrieved person sends via mail is deemed filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the request is deemed filed on the date that the agency receives it, unless the sender can demonstrate through competent evidence of the mailing date.

(4) Failure to submit a timely request for a hearing constitutes a waiver of an individual's due process rights.

(5) DMHF may dismiss a request for a hearing if the Aggrieved Person:

- (a) withdraws the request in writing;
- (b) verbally withdraws the hearing request at a prehearing

conference;

(c) fails to appear or participate in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the hearing officer or fails to provide medical records that the agency requests.

#### **R410-14-6. Reinstatement and Continuation of Services.**

(1) Continuation of Services. If the agency mails the notice of action in the time required by Section R410-14-3 and the recipient requests a hearing within 10 days of the date the notice was mailed, the agency shall continue services until a decision is rendered after the hearing unless it is determined at the hearing that the sole issue is one of federal or state law or policy and the agency promptly informs the recipient in writing that services are to be terminated or reduced pending the hearing decision.

(2) Reinstatement of Services.

(a) The agency may reinstate services if a recipient requests a hearing not more than 10 days after the date of the action. The reinstated services must continue until a hearing decision is rendered unless, at the hearing, it is determined that the sole issue is one of federal or state law or policy.

(b) The agency shall reinstate and continue services until a decision is rendered after a hearing if the agency takes action without giving 10-day notice as required by Section R410-14-3, the recipient requests a hearing not more than 10 days after the date the notice of action is mailed and action is not the result of the application of federal or state law or policy.

#### **R410-14-7. Notice of Hearing.**

(1) The agency shall notify the aggrieved person or representative in writing of the date, time and place of the hearing, and shall mail the notice at least 10 calendar days before the date of the hearing unless all parties agree to an alternative time frame. All aggrieved persons must inform the agency of a current address and telephone number.

(2) If DMHF must provide notice of a hearing, the notice becomes effective on the date of first class mailing to the party's address of record.

#### **R410-14-8. Prehearing Procedures.**

(1) DMHF shall schedule a preliminary conference, or begin negotiations in writing, within 30 calendar days from the date it receives the request for a hearing or agency action.

(2) The hearing officer may elect to conduct a preliminary conference to:

(a) formulate or simplify the issues;

(b) obtain admissions of fact and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) outline procedures for the hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The hearing officer may request a review of the medical record by a DMHF CHEC/Utilization Review committee to evaluate the medical necessity of benefits or services under dispute. The committee's recommendation is not binding, but may be admitted as evidence and included in the hearing record. If a party to the proceeding objects to the committee's determination, a representative of the committee shall be made available at the hearing for examination by the hearing officer and the parties.

(4) The hearing officer may require the parties to submit a prehearing position statement setting forth the parties'

positions.

(5) The parties may enter into a written stipulation during the preliminary conference or at any time during the process.

(6) Ex parte communications with the hearing officer are prohibited. If a party attempts ex parte communication, the hearing officer shall inform the offeror that any communication that the hearing officer receives off the record, will become part of the record and furnished to all parties. Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

(7) The agency shall allow the aggrieved person or a representative to examine all DMHF documents and records upon written request to DMHF at least three days before the hearing.

(8) A party may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(a) The agency may request copies of pertinent records in the possession of a party and the recipient's health care providers. In the event the recipient or provider fails to produce the records within a reasonable time, DMHF may review all pertinent records in the custody of the recipient or provider during regular working hours after three days of written notice.

(b) The recipient shall submit medical records with the hearing request whenever possible. Necessary medical records include:

(i) the provision of each service and activity addressed in the hearing request;

(ii) the first and last name of the party;

(iii) the reason for performing the service or activity that includes the party's complaint or symptoms;

(iv) the recipient's medical history;

(v) examination findings;

(vi) diagnostic test results;

(vii) the goal or need that the plan of care identifies; and

(viii) the observer's assessment, clinical impression or diagnosis that includes the date of observation and identity of the observer.

(c) The medical records must demonstrate that the service is:

(i) medically necessary;

(ii) consistent with the diagnosis of the recipient's condition; and

(iii) consistent with professionally recognized standards of care.

(9) The hearing officer may require each party to file a signed prehearing disclosure form at least 10 calendar days before the scheduled hearing that identifies:

(a) fact witnesses;

(b) expert witnesses;

(c) exhibits and reports the parties intend to offer into evidence at the hearing.

(10) Each party shall supplement the disclosure form with information that becomes available after filing the original form.

#### **R410-14-9. Form and Service of Papers.**

(1) Any document that a party files with DMHF in a proceeding must:

(a) be typed or legibly written;

(b) bear a caption that clearly shows the title of the hearing;

(c) bear the docket number, if any;

(d) be dated and signed by the party or the party's authorized representative; and

(e) contain the address and telephone number of the party or the party's authorized representative.

(2) The party that files a document with DMHF shall also serve a copy of the document to all parties to the proceeding or

their representatives and file a proof of service with DMHF that consists of a certificate of service.

(3) A document may be served by mail, fax, or email address to the party's address or phone number on record with the agency.

(4) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

#### **R410-14-10. Conduct of Hearing.**

(1) The agency shall conduct hearings in accordance with Section 63G-4-203 on a de novo basis.

(2) DMHF shall appoint an impartial hearing officer to conduct hearings. Previous involvement in the initial determination of the action precludes an officer from appointment.

(3) Telephonic hearings will be held at the discretion of the hearing officer.

(4) The Department is not responsible for any travel costs incurred by the member in attending an in-person hearing.

(5) The hearing officer shall take testimony under oath or affirmation.

(6) Each party has the right to:

(a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;

(b) introduce exhibits;

(c) impeach any witness regardless of which party first called the witness to testify; and

(d) rebut the evidence against the party.

(7) Each party may admit any relevant evidence and use hearsay evidence to supplement or explain other evidence as may be required for full disclosure of all facts relevant to the disposition of the hearing. Hearsay, however, is not sufficient by itself to support a finding unless admissible over objection in civil actions. The hearing officer shall give effect to the rules of privilege recognized by law and may exclude irrelevant, immaterial and unduly repetitious evidence.

(8) The hearing officer may question any party or witness.

(9) The hearing officer shall control the evidence to obtain full disclosure of the relevant facts and to safeguard the rights of the parties. The hearing officer may determine the order in which he receives the evidence.

(10) The hearing officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly or disruptive conduct. The hearing officer may remove any person, including a participant from the hearing, to maintain order. If a person shows persistent disregard for order and procedure, the hearing officer may:

(a) restrict the person's participation in the hearing;

(b) strike pleadings or evidence; or

(c) issue an order of default.

(11) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the hearing officer at no cost to the agency.

(12) The party who initiates the hearing process through a request for agency action has the burden of proof as the moving party.

(13) When a party possesses but fails to introduce certain evidence, the hearing officer may infer that the evidence does not support the party's position.

#### **R410-14-11. Witnesses and Subpoenas.**

(1) A party shall arrange for a witness to be present at a hearing.

(2) A hearing officer may on his own or at the request of a party, order a witness excluded so that they cannot hear another witness' testimony.

(3) The hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence upon

written request by a party that demonstrates a sufficient need.

(4) The hearing officer may issue a subpoena on his own motion.

(5) A party may file an affidavit that requests the hearing officer to subpoena a witness to produce books, papers, correspondence, memoranda, or other records. The affidavit must include:

(a) the name and address of the person or entity upon whom the subpoena is to be served;

(b) a description of the documents, papers, books, accounts, letters, photographs, objects, or other tangible items that the applicant seeks;

(c) material that is relevant to the issue of the hearing; and

(d) a statement by the applicant that to the best of his knowledge, the witness possesses or controls the requested material.

(6) A party shall arrange to serve any subpoena that the hearing officer issues on its behalf, and shall serve a copy of the affidavit that it presents to the hearing officer.

(7) Except for employees of an agency, a witness that the hearing officer subpoenas to attend a hearing is entitled to appropriate fees and mileage. The witness shall file a written demand for fees with the hearing officer within 10 calendar days from the date that he appears at the hearing.

(8) The hearing officer may issue an order of default against any party that fails to obey an order entered by the hearing officer.

#### **R410-14-12. Record.**

(1) The hearing officer shall make a complete record of all hearings. A hearing record is the sole property of DMHF and DMHF shall maintain the complete record in a secure area.

(2) Proceedings other than hearings may be recorded at the discretion of the hearing officer.

(3) If a party requests a copy of the recording of a hearing, that party may transcribe the recording at the party's sole cost.

(4) DMHF or its designated agent shall retain recordings of all hearings for a period of one year.

(5) DMHF shall retain written records of all hearings for a period of 10 years pending further litigation.

#### **R410-14-13. Continuances or Further Hearings.**

(1) The hearing officer, on the officer's own motion or at the request of a party showing good cause, may:

(a) continue the hearing to another time or place; or

(b) order a further hearing.

(2) If the hearing officer determines that additional evidence is necessary for the proper determination of the case, the officer may:

(a) continue the hearing to a later date and order the parties to produce additional evidence; or

(b) close the hearing and hold the record open to receive additional documentary evidence.

(3) The hearing officer shall provide to all parties any evidence that he receives and each party has the opportunity to rebut that evidence.

(4) The hearing officer shall provide written notice of the time and place of a continued or further hearing, except when the officer orders a continuance during a hearing and all parties receive oral notice.

#### **R410-14-14. Proposed Decision and Final Agency Review.**

(1) At the conclusion of the hearing, the hearing officer shall take the matter under advisement and submit a recommended decision to the DMHF Director or the director's designee. The recommended decision is based on the testimony and evidence entered at the hearing, Medicaid policy and procedure, and legal precedent.

(2) The recommended decision must contain findings of

fact and conclusions of law.

(3) The DMHF Director or the director's designee may:

(a) adopt the recommended decision or any portion of the decision;

(b) reject the recommended decision or any portion of the decision, and make an independent determination based upon the record; or

(c) remand the matter to the hearing officer to take additional evidence, and the hearing officer thereafter shall submit to the DMHF director or the director's designee a new recommended decision.

(4) The director or designee's decision constitutes final administrative action and is subject to judicial review.

(5) DMHF shall send a copy of the final administrative action to each party or representative and notify them of their right to judicial review.

(6) The parties shall comply with a final decision from the director reversing the agency's decision within 10 calendar days.

(7) The DOH Executive Director shall review all recommended decisions to determine approval of medical assistance for an organ transplant. The Executive Director's decision constitutes final administrative action and is subject to judicial review.

#### **R410-14-15. Amending Administrative Orders.**

(1) DMHF may amend an order if the hearing officer determines that the order contains a clerical error.

(2) DMHF shall notify the parties of its intent to amend the order by serving a notice of agency action signed by the hearing officer.

(3) The DMHF Director shall review the amended order and he or his designee shall issue a final agency amended order.

(4) DMHF shall provide a copy of the final amended order to the respondent and the petitioner.

#### **R410-14-16. Agency Review.**

A party to the proceeding may move for reconsideration of DMHF's final administrative action in accordance with Sections 63G-4-301 through 63G-4-302. A person may seek review of a DWS final agency order concerning eligibility for medical assistance by filing a written request for review with DMHF in accordance with Section 63G-4-301.

#### **R410-14-17. Judicial Review.**

A party to the proceeding may obtain judicial review in accordance with Section 63G-4-102 and Sections 63G-4-401 through 63G-4-405.

#### **R410-14-18. Declaratory Orders.**

(1) DMHF may issue declaratory orders in accordance with Rule R380-1.

(2) If DMHF does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.

(3) DMHF shall retain the request for declaratory ruling in its records.

(4) DMHF may not issue a declaratory order if an adjudicative proceeding that involves the same parties and issue is pending before the agency or a federal or state court.

#### **R410-14-19. Interpreters.**

(1) If a party notifies DMHF that it needs an interpreter, DMHF shall arrange for an interpreter at no cost to the party.

(2) The party may arrange for an interpreter to be present at the hearing only if the hearing officer can verify that the interpreter is at least 18 years of age, and fluent in English and the language of the person who testifies.

(3) The hearing officer shall instruct the interpreter to interpret word for word, and not to summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter must swear under oath to truthfully and accurately translate all statements, questions and answers.

**R410-14-20. MCO Grievance and Appeal System.**

(1) For the purpose of this section, the following definitions apply:

(a) "Action" means one of the following actions by an MCO:

(i) The denial or limited authorization of a requested service, including the type and level of services;

(ii) The reduction, suspension, or termination of a previously authorized service;

(iii) The denial, in whole or in part, of payment for a service;

(iv) The failure to provide services in a timely manner;

(v) The failure to act within the time frames provided in 42 CFR 438.408(b);

(vi) The denial of a Medicaid enrollee's request to exercise his or her right under 42 CFR 438.52(b)(2)(ii) to obtain services outside of the network; or

(vii) The restriction of a Medicaid enrollee that utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines.

(b) "Appeal" means a request for the MCO review of an "action" as defined in this section or a request for DMHF to review a final decision rendered by an MCO as a result of the MCO's appeal process.

(c) "Party" means the agency, or other person commencing an adjudicative proceeding, all respondents, and any MCO who is or may be obligated to pay a claim or provide a benefit or service to a recipient.

(2) An MCO shall establish a grievance system in accordance with this rule, 42 CFR 431.200 et seq. and 438.400 et seq. and the MCO's contractual obligations entered into with DMHF.

(3) The MCO grievance system shall include a written internal grievance procedure for aggrieved person to challenge the approval for payment or denial of payment for medical services.

(4) The MCO shall provide to its enrollees and providers written information that explains the grievance and appeal procedure including a right to request a state fair hearing in accordance with this rule.

(5) The MCO's notice of action shall comply with the requirements set out in Section R410-14-3.

(6) The MCO's written notice of final decision shall include an explanation of the aggrieved person's right to a state fair hearing pursuant to this rule.

(7) State fair hearings.

(a) Unless otherwise stated in this section, an aggrieved party may appeal an MCO final written disposition on an action by requesting a state fair hearing in accordance with this rule. The hearing request must include a copy of the final written notice of the MCO disposition.

(b) An aggrieved person must exhaust the MCO grievance procedure before an enrollee or provider may request a state fair hearing. The hearing request must include a copy of the final written notice of the MCO decision.

(c) The aggrieved party must also request a hearing within 30 days from the date of the MCO final written notice of the decision.

(d) Multiple MCO Participation in a state fair hearing.

(i) If an appeal is based on a dispute regarding the payment liability between two or more MCOs, the aggrieved person is not required to exhaust the MCO grievance procedure for each MCO before requesting a state fair hearing under this rule.

(ii) If DMHF identifies an MCO that may be liable to pay the claim and did not participate in the underlying grievance procedure, it shall send notice to that MCO that it may be

subject to liability and its right to participate in the state fair hearing.

(iii) If more than one MCO is party to the state fair hearing, DMHF shall provide a notice to all parties that shall include the identity of all parties, the reason for the dispute, a copy of the hearing request and a statement that the MCO that did not participate in the underlying grievance procedure may be subject to payment liability and its right to participate in the state fair hearing.

(e) DMHF may, but is not required to, file an answer or other response or position statement in the hearing proceeding at any time so long as it gives notice to all other parties no less than five days before the hearing. If DMHF chooses not to file a response or position statement, it does not waive its right to participate in the hearing.

**R410-14-21. Pre-admission Screening Resident Review (PASRR) Hearings.**

Pursuant to 42 U.S.C. 1396r, any resident and potential resident of a nursing facility whether Medicaid eligible or not, who disagrees with the preadmission screening and appropriateness of a placement decision that DMHF or its designated agent makes, has the right to an informal hearing upon request in accordance with this rule and the requirements set out in 42 CFR 483.200, Subpart D.

**R410-14-22. Nurse Aid Registry Hearings.**

Pursuant to 42 U.S.C. 1395i-3, each nurse aide is subject to investigation of allegations of resident abuse, neglect or misappropriation of resident property. DMHF or its designated agent shall investigate each complaint and the nurse aide is entitled to a hearing that DMHF or its designated agent conducts before a substantiated claim can be entered into the registry.

**R410-14-23. Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) and Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID) Hearings.**

Pursuant to 42 CFR 431, Subpart D, DMHF shall provide an appeals hearing procedure for Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID). The informal hearing shall be conducted pursuant to this rule and the requirements of 42 CFR 431.153 and 431.154.

**R410-14-24. Home and Community-Based Waiver Hearings.**

(1) Hearings conducted by DMHF. Pursuant to 42 CFR 431, Subpart E, DMHF shall provide an appeals hearing procedure for home and community-based waiver hearings. The informal hearing shall be conducted pursuant to this rule and the requirements of 42 CFR 431.200 through 431.250.

(2) Hearings conducted by the Division of Services for People with Disabilities (DSPD).

(a) For home and community-based waivers in which DSPD is the designated operating agency and the grievance is based on whether the person meets the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the eligibility determination of the operating agency is final.

(b) If DSPD determines that an individual does not meet the eligibility criteria for state matching funds through DHS, it shall inform the individual in writing and provide the individual an opportunity to appeal the decision through the DHS hearing process in accordance with Section R539-3-8.

(c) The DSPD decision is dispositive for purposes of this subsection. DMHF shall sustain the determination and there is no right to further agency review.

**R410-14-25. Restriction Program Hearings.**



Pursuant to 42 CFR 431.54(e), the Department may restrict Medicaid recipients who utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines. DMHF shall give the recipient notice and opportunity for an informal hearing pursuant to this section before imposing restrictions.

#### **R410-14-26. Eligibility Hearings.**

(1) The eligibility agency shall provide a fair hearing process for applicants and recipients in accordance with the requirements of 42 CFR 431.220 through 431.246. The eligibility agency shall comply with Title 63G, Chapter 4.

(2) An applicant or recipient must request a hearing in writing or orally at the agency that made the final eligibility decision. A request for a hearing concerning a Medicaid eligibility decision must be made within 90 calendar days of the date of the notice of agency action with which the applicant or recipient disagrees. The request need only include a statement that the applicant or recipient wants to present his case.

(3) Hearings are conducted only at the request of a client or spouse, a minor client's parent, or a guardian or representative of the client.

(4) A recipient who requests a fair hearing concerning a decision about Medicaid eligibility shall receive continued medical assistance benefits pending a hearing decision if the recipient requests a hearing before the effective date of the action or within 15 calendar days of the date on the notice of agency action.

(5) The recipient must repay the continued benefits that he receives pending the hearing decision if the hearing decision upholds the agency action.

(a) A recipient may decline the continued benefits that the Department offers pending a hearing decision by notifying the eligibility agency.

(b) Benefits that the recipient must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

(6) The eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, the eligibility agency must receive the request by the close of business on the next business day.

(7) DWS conducts fair hearings for all medical assistance cases except those concerning eligibility for advanced premium tax credits made by the FFM, foster care or subsidized adoption Medicaid. The Department conducts hearings for foster care or subsidized adoption Medicaid cases. In addition, the Department conducts hearings concerning its disability determination decisions. The FFM conducts hearings concerning determinations for advanced premium tax credits.

(8) DWS conducts informal, evidentiary hearings in accordance with Sections R986-100-124 through R986-100-134, except for the provisions in Subsection R986-100-128(17) and Subsection R986-100-134(5). Instead, the provisions in Subsection R414-301-7(16) concerning the time frame to comply with the DWS decision, and Subsection R414-301-7(17)(c) concerning continued assistance during a superior agency review conducted by the Department apply respectively.

(9) The Department conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date the Department issues the hearing decision, the applicant or recipient may file a petition for judicial review with the district court.

(10) DWS may not conduct a hearing contesting resource assessment until an institutionalized individual has applied for

Medicaid.

(11) An applicant or recipient may designate a person or professional organization to assist in the hearing or act as his representative. An applicant or recipient may have a friend or family member attend the hearing for assistance.

(12) The applicant, recipient or representative can arrange to review case information before the scheduled hearing.

(13) At least one employee from the eligibility agency must attend the hearing. Other employees of the eligibility agency, other state agencies and legal representatives for the eligibility agency may attend as needed.

(14) The DWS Division of Adjudication and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts and the policies or regulations supporting the decision.

(a) The DWS decision shall include information about the right to request a superior agency review from the Department and how to make that request.

(b) The applicant or recipient may appeal the DWS decision to the Department pursuant to Section R410-14-16. The request for agency review must be made in writing and delivered to either DWS or the Department within 30 days of the mailing date of the decision.

(15) The Department, as the single state Medicaid agency, is a party to all fair hearings concerning eligibility for medical assistance programs. The Department conducts appeals and has the right to conduct a superior agency review of medical assistance hearing decisions rendered by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless the Department conducts a superior agency review. The DWS hearing decision may be made final in less than 30 days upon agreement of all parties.

(17) The Department conducts a superior agency review when the applicant or recipient appeals the DWS decision or upon its own accord if it disagrees with the DWS decision.

(a) The Department notifies DWS whenever it conducts a superior agency review.

(b) The DWS hearing decision is suspended until the Department issues a final decision and order on agency review.

(c) A recipient receiving continued benefits continues to be eligible for continued benefits pending the superior agency review decision.

(18) The superior agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.

(19) A Department decision and order on agency review becomes final upon issuance.

(20) The eligibility agency takes case action within 10 calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or recipient may file a petition for judicial review with the district court. Failure to appeal a DWS hearing decision to the Department negates this right to a judicial appeal.

(22) Recipients are not entitled to continued benefits pending judicial review by the district court.

#### **KEY: Medicaid**

**February 10, 2016**

**Notice of Continuation September 27, 2012**

**26-1-24**

**26-1-5**

**63G-4-102**

**R432. Health, Family Health and Preparedness, Licensing.  
R432-100. General Hospital Standards.**

**R432-100-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

**R432-100-2. Purpose.**

The purpose of this rule is to promote the public health and welfare through establishment and enforcement of the licensure standards. The rule sets standards for the construction and operation of a general hospital. The standards of patient care apply to inpatient, outpatient, and satellite services.

**R432-100-3. Construction, Facilities, and Equipment Standards.**

Hospitals shall be constructed and maintained in accordance with R432-4-1 through R432-4-24.

**R432-100-4. Hospital Swing-Bed and Transitional Care Units.**

Hospitals with designated swing bed units or transitional care units shall comply with this section.

(1) In addition to R432-100, designated hospital swing beds shall comply with the following sections of R432-150, Nursing Care Facility Rules: 150-4, 150-5, 150-11 through 150-17, 150-20, 150-22, and 150-24.

(2) Transitional Care Units shall be licensed as Nursing Care Facilities under a separate licensing category and shall conform to the requirements of R432-150, Nursing Care Facility Rules.

**R432-100-5. Governing Body.**

(1) Each licensed hospital shall have a governing body hereinafter called the board.

(2) The board shall be legally responsible for the conduct of the hospital. The board is also responsible for the appointment of the medical staff.

(3) The board shall be organized in accordance with the Articles of Incorporation or Bylaws.

(a) The Articles or Bylaws shall specify:

- (i) the duties and responsibilities of the board;
- (ii) the method for election or appointment to the board;
- (iii) the size of the board;
- (iv) the terms of office of the board;
- (v) the methods for removal of board members and officers;

(vi) the duties and responsibilities of the officers and any standing committees;

(vii) the numbers or percentages of members that constitute a quorum for board meetings;

(viii) the board's functional organization, including any standing committees;

(ix) to whom responsibility for operation and maintenance of the hospital, including evaluation of hospital practices, may be delegated;

(x) the methods established by the board for holding such individuals responsible;

(xi) the mechanism for formal approval of the organization, bylaws, rules of the medical staff and hospital departments; and

(xii) the frequency of meetings.

(4) The board shall meet not less than quarterly, and shall keep written minutes of meetings and actions, and distribute copies to members of the board.

(5) The board shall employ a competent executive officer or administrator and vest this person with authority and responsibility for carrying out board policies. The administrator's qualifications, responsibilities, authority, and accountability shall be defined in writing.

(6) The board, through its officers, committees, medical

and other staff, shall:

(a) develop and implement a long range plan;

(b) appoint members of the medical staff and delineate their clinical privileges;

(c) approve organization, bylaws, and rules of medical staff and hospital departments; and

(d) maintain a list of the scope and nature of all contracted services.

**R432-100-6. Administrator.**

(1) The administrator shall establish and maintain an organizational structure for the hospital indicating the authority and responsibility of various positions, departments, and services within the hospital.

(2) The administrator shall designate in writing a person to act in the administrator's absence.

(3) The administrator shall be the direct representative of the board in the management of the hospital.

(4) The administrator shall function as liaison between the board, the medical staff, the nursing staff, and departments of the hospital.

(5) The administrator shall advise the board in the formulation of hospital policies and procedures. The administrator shall review and revise policies and procedures to reflect current hospital practice.

(6) The administrator is responsible to see that hospital policies and procedures are implemented and followed.

(7) The administrator shall maintain a written record of all business transactions and patient services rendered in the hospital and submit reports as requested to the board.

(8) Patient billing practices shall comply with the requirements of 26-21-20 UCA.

(9) The administrator shall appoint a member of the staff to oversee compliance with the requirements of the Utah Anatomical Gift Act.

**R432-100-7. Medical and Professional Staff.**

(1) Each hospital shall have an organized medical and professional staff that operates under bylaws approved by the board.

(2) The medical and professional staff shall advise and be accountable to the board for the quality of medical care provided to patients.

(3) The medical and professional staff must adopt bylaws and policies and procedures to establish and maintain a qualified medical and professional staff including current licensure, relevant training and experience, and competency to perform the privileges requested. The bylaws shall address:

(a) the appointment and re-appointment process;

(b) the necessary qualifications for membership;

(c) the delineation of privileges;

(d) the participation and documentation of continuing education;

(e) temporary credentialing and privileging of staff in emergency or disaster situations; and

(f) a fair hearing and appeals process.

(4) The medical care of all persons admitted to the hospital shall be under the supervision and direction of a fully qualified physician who is licensed by the state. During an emergency or disaster situation a member of the credentialed and privileged staff must supervise temporary credentialed practitioners.

(5) An applicant for staff membership and privileges may not be denied solely on the ground that the applicant is a licensed podiatrist or licensed psychologist rather than licensed to practice medicine under the Utah Medical Practice Act or the Utah Osteopathic Medical Licensing Act.

(6) Membership and privileges may not be denied on any ground that is otherwise prohibited by law.

(7) Each applicant for medical and professional staff

membership must be oriented to the bylaws and must agree in writing to abide by all conditions.

(8) The medical and professional staff shall review each applicant and grant privileges based on the scope of their license and abilities.

(9) The medical and professional staff shall review appointments and re-appointments to the medical and professional staff at least every two years.

(10) During an emergency or disaster situation the hospital shall orient each temporary practitioner to the practitioner's assigned area of the hospital.

#### **R432-100-8. Personnel Management Service.**

(1) The personnel management system is organized to ensure personnel are competent to perform their respective duties, services, and functions.

(2) There shall be written policies, procedures, and performance standards that include:

- (a) job descriptions for each position or employee;
- (b) periodic employee performance evaluations;
- (c) employee health screening, including Tuberculosis testing;

(i) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(ii) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

- (A) initial hiring;
- (B) suspected exposure to a person with active tuberculosis; and
- (C) development of symptoms of tuberculosis.

(iii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) policies to ensure that all employees receive unit specific training;

(e) policies to ensure that all hospital direct care staff receive continued competency training in current patient care practices;

(f) policies to ensure that all hospital direct care staff have current cardiopulmonary resuscitation certification; and

(g) policies to ensure that OSHA regulations regarding Blood Borne Pathogens are implemented and followed.

(3) All personnel shall be registered, certified or licensed as required by the Utah Department of Commerce within 45 days of employment.

(4) A copy of the current certificate, license or registration shall be available for Department review.

(5) All direct care and housekeeping staff shall receive annual documented inservice training in the requirements for reporting abuse, neglect, or exploitation of children or adults.

(6) Volunteers may be utilized in the daily activities of the hospital, but shall not be included in the hospital staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened and supervised according to hospital policy.

(b) Volunteers shall be familiar with hospital volunteer policies, including patient rights and hospital emergency procedures.

(7) If the hospital participates in a professional graduate education program, there shall be policies and procedures specifying the patient care responsibilities and supervision of the graduate education program participants.

#### **R432-100-9. Quality Improvement Plan.**

(1) The Board shall ensure that there is a well-defined quality improvement plan designed to improve patient care.

(2) The plan shall be consistent with the delivery of patient care.

(3) The plan shall be implemented and include a system for the collection of indicator data.

(a) The plan shall include an incident reporting system to identify problems, concerns, and opportunities for improvement of patient care.

(b) Incident reports shall be available for Department review.

(c) A system shall be implemented for assessing identified problems, concerns, and opportunities for improvement.

(4) The plan shall implement actions that are designed to eliminate identified problems and improve patient care.

(5) Each hospital shall maintain a quality improvement committee. The quality improvement committee shall keep and make available for Department review written minutes documenting corrective actions and results.

(6) The quality improvement committee shall report findings and concerns at least quarterly to the board, the medical staff, and the administrator.

(7) Infection reporting shall be integrated into the quality improvement plan, and shall be reported to the Department in accordance with R386-702 Communicable Diseases.

#### **R432-100-10. Infection Control.**

Each hospital must implement a hospital-wide infection control program.

(1) The infection control program shall include at least the following:

- (a) definitions of nosocomial infections;
- (b) a system for reporting, evaluating, and investigating infections;
- (c) review and evaluation of aseptic, isolation, and sanitation techniques;
- (d) methods for isolation in relation to the medical condition involved;
- (e) preventive, surveillance, and control procedures;
- (f) laboratory services;
- (g) an employee health program;
- (h) orientation of all new employees; and
- (i) documented in-service education for all departments and services relative to infection control.

(2) Infection control reporting data shall be incorporated into the hospital quality improvement process.

(3) There shall be written infection control policies and procedures for each area of the hospital, including requirements dictated by the physical layout, personnel and equipment involved.

(4) There shall be written policies for the selection, storage, handling, use, and disposition of disposable or reusable items. Single-use items may be reused according to hospital policy.

(a) Reusable items shall have specific policies and procedures for each type of reuse item.

(b) Reuse data shall be incorporated into the quality improvement process.

(c) Reuse data shall be incorporated in the hospital infection control identification and reporting process.

#### **R432-100-11. Patient Rights.**

(1) The facility shall inform each patient at the time of admission of patient rights and support the exercise of the patient's right to the following:

(a) to access all medical records, and to purchase at a cost not to exceed the community standard, photocopies of his record;

(b) to be fully informed of his medical health status in a language he can understand;

(c) to reasonable access to care;

(d) to refuse treatment;

(e) to formulate an advanced directive in accordance with

the Advance Health Care Directive Act, UCA 75-2a;

- (f) to uniform, considerate and respectful care;
  - (g) to participate in decision making involved in managing his health care with his physician, or to have a designated representative involved;
  - (h) to express complaints regarding the care received and to have those complaints resolved when possible;
  - (i) to refuse to participate in experimental treatment or research;
  - (j) to be examined and treated in surroundings designed to give visual and auditory privacy; and
  - (k) to be free from mental and physical abuse, and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a licensed practitioner for a specified and limited period of time or when necessary to protect the patient from injury to himself or others.
- (2) The hospital shall establish a policy and inform patients and legal representatives regarding the withholding of resuscitative services and the forgoing or withdrawing of life sustaining treatment and care at the end of life. This policy shall be consistent with state law.

#### **R432-100-12. Patient Designated Caregiver.**

- (1) The hospital shall give a patient admitted to the hospital the opportunity to designate a caregiver who will assist the patient with continuing care after discharge from the hospital.
- (a) A caregiver is an individual designated by an inpatient of the hospital to assist with continuing care that can be given in the patient's residence after discharge;
  - (b) The hospital shall document the designated caregiver in the patient record and include contact information; and
  - (c) If the patient declines to designate a caregiver, the hospital shall document the patient's choice in the medical record.
- (2) The hospital shall notify the designated caregiver as soon as practicable before any of the following circumstances occur:
- (a) The patient is transferred to another health facility;
  - (b) The patient is discharged back to their own residence.
  - (3) If the hospital is unable to contact the designated caregiver when changes occur, the lack of contact shall not interfere with, delay or otherwise affect the medical care provided to the patient or the transfer or discharge of the patient.
  - (4) The hospital shall document any attempt to contact the designated caregiver in the patient record, to include dates and times attempted.
  - (5) The patient may give written consent to allow the hospital to release medical information to the designated caregiver, pursuant to the hospital's established procedures for the release of personal health information.
  - (6) Prior to the patient being discharged, the hospital shall provide a written discharge plan for continuing care needs to the patient and designated caregiver, which shall include:
    - (a) The name and contact information of the designated caregiver and relation to the patient;
    - (b) A description of continuing care tasks that the patient requires, in a culturally competent manner; and
    - (c) Contact information for any other health care resources necessary to meet the needs of the patient.
  - (7) Prior to the patient being discharged, the hospital shall provide the designated caregiver with an opportunity for instruction in continuing care tasks outlined in the discharge plan, which shall include:
    - (a) Demonstration of the continuing care tasks by hospital personnel; and
    - (b) Opportunity for the patient and designated caregiver to ask questions and receive answers regarding the continuing care tasks; and

(c) Education and counseling about medications, including dosing and proper use of delivery devices.

(8) The hospital shall document the instruction given to the patient and designated caregiver in the patient record, to include the date, time and contents of the instructions.

#### **R432-100-13. Nursing Care Services.**

- (1) There shall be an organized nursing department that is integrated with other departments and services.
- (a) The chief nursing officer of the nursing department shall be a registered nurse with demonstrated ability in nursing practice and administration.
  - (b) Nursing policies and procedures, nursing standards of patient care, and standards of nursing practice shall be approved by the chief nursing officer.
  - (c) A registered nurse shall be designated and authorized to act in the chief nursing officer's absence.
  - (d) Nursing tasks may be delegated pursuant to R156-31-701, Delegation of Nursing Tasks.
  - (2) Qualified registered nurses shall be on duty at all times to give patients nursing care that requires the judgment and special skills of a registered nurse. The nursing department shall develop and maintain a system for determining staffing requirements for nursing care on the basis of demonstrated patient need, intervention priority for care, patient load, and acuity levels.
  - (3) Nursing care shall be documented for each patient from admission through discharge.
    - (a) A registered nurse shall be responsible to document each patient's nursing care and coordinate the provision of interdisciplinary care.
    - (b) Nursing care documentation shall include the assessments of patient's needs, clinical diagnoses, intervention identified to meet the patient's needs, nursing care provided and the patient's response, the outcome of the care provided, and the ability of the patient, family, or designated caregiver in managing the continued care after discharge.
    - (c) Patients shall receive prior to discharge written instructions for any follow-up care or treatment.
- #### **R432-100-14. Critical Care Unit.**
- (1) Hospitals that provide critical care units shall comply with the requirements of R432-100-13. Medical direction for the unit(s) shall be according to the scope of services provided as delineated in hospital policy and approved by the board.
- (2) Critical care unit nursing direction shall be provided by a designated, qualified registered nurse manager who has relevant education, training and experience in critical care. The supervising nurse shall coordinate the care provided by all nursing service personnel in the critical care unit. The registered nurse manager shall have administrative responsibility for the critical care unit, assuring that a registered nurse who has advanced life support certification is on duty and in the unit at all times.
- (3) Each critical care unit shall be designed and equipped to facilitate the safe and effective care of the patient population served. Equipment and supplies shall be available to the unit as determined by hospital policy in accordance with the needs of the patients.
- (4) An emergency cart must be readily available to the unit and contain appropriate drugs and equipment according to hospital policy. The cart, or the cart locking mechanism, must be checked every shift and after each use to assure that all items required for immediate patient care are in place in the cart and in usable condition.
- (5) The following support services shall be immediately available to the critical care unit on a 24-hour basis:
- (a) blood bank or supply;
  - (b) clinical laboratory; and

(c) radiology services.

(6) If the hospital provides dialysis services, the dialysis services shall comply with R432-650 End Stage Renal Disease Facility Rules, sections R432-650-7, Required Staffing; and R432-650-12, Water Quality.

#### **R432-100-15. Surgical Services.**

(1) Surgical services provided by the hospital shall be integrated with other departments or services of the hospital. The relationship, objective, and scope of all surgical services shall be specified in writing.

(a) Administrative direction of surgical services shall be provided by a person appointed and authorized by the administrator.

(b) Medical direction of surgical services shall be provided by a member of the medical staff.

(c) Qualified registered nurses shall supervise the provision of surgical nursing care.

(d) The operating room suites shall be directed and supervised by a qualified registered nurse. The supervisor shall have authority and responsibility for:

(i) assuring that the planned procedure is within the scope of privileges granted to the physician.

(ii) maintaining the operating room register; and

(iii) other administrative functions, including serving on patient care committees.

(e) The hospital shall establish a policy governing the use of obstetrical delivery and operating rooms to ensure that any patient with parturition imminent, or with an obstetrical emergency requiring immediate medical intervention to preserve the health and life of the mother or her infant, is given priority over other obstetrical and non-emergent surgical procedures.

(f) Qualified surgical assistants shall be used as needed in operations in accordance with hospital by-laws.

(g) Surgical technicians and licensed practical nurses may serve as scrub nurses under the direct supervision of a registered nurse, but may not function as circulation nurses in the operating rooms, unless the scrub nurse is a registered nurse.

(h) Outpatient surgical patients shall not be routinely admitted to the hospital as inpatients. A systematic review process shall evaluate patients who require hospitalization after outpatient surgery.

(2) A safe operating room environment shall be established, controlled and consistently monitored.

(a) Surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

(b) Traffic in and out of the operating room shall be controlled. There shall be no through traffic.

(c) There shall be a scavenging system for evacuation of anesthetic waste gases.

(d) The following equipment shall be available to the operating suite:

(i) a call-in system;

(ii) a cardiac monitor;

(iii) a ventilation support system;

(iv) a defibrillator;

(v) an aspirator; and

(vi) equipment for cardiopulmonary resuscitation.

(3) The administration of anesthetics shall conform to the requirements of Anesthesia Services, R432-100-15.

(4) Removal of surgical specimens shall conform with the requirements of Laboratory and Pathology Services, R432-100-22.

#### **R432-100-16. Anesthesia Services.**

(1) There shall be facilities and equipment for the administration of anesthesia commensurate with the clinical and surgical procedures planned for the institution. Anesthesia care

shall be available on a 24-hour basis.

(a) Administrative direction of anesthesia services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of anesthesia services shall be provided by a member of the medical staff.

(c) Anesthesia care shall be provided by anesthesiologists, other qualified physicians, dentists, oral surgeons, or Certified Registered Nurse Anesthetists who are members of the medical staff within the scope of their practice and license.

(i) A qualified physician, dentist or oral surgeon shall have documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and shall be able to perform at least the following:

(A) procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, and other pain producing clinical procedures;

(B) life support functions during the administration of anesthesia, including induction and intubation procedures; and

(C) provide pre-anesthesia and post-anesthesia management of the patient.

(ii) The responsibilities and privileges of the person administering anesthesia shall be clearly defined by the medical staff.

(iii) Both the patient and the operating surgeon shall be informed prior to surgery of who will be administering anesthesia.

(iv) Medicaid certified hospitals shall comply with the requirements of 42 CFR 482.52(a), Subpart D, Anesthesia Services.

(2) The use of flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field is prohibited.

(3) The anesthetic equipment shall be inspected and tested by the person administering anesthesia before use in accordance with hospital policy.

#### **R432-100-17. Emergency Care Service.**

(1) Each hospital shall evaluate and classify itself to indicate its capability in providing emergency care. Acute Hospitals and Critical Access Hospitals shall be classified as Type I, II or III. Type IV category may be used for Specialty Hospitals.

(a) Type I offers comprehensive emergency care 24 hours a day in-house, with at least one physician experienced in emergency care on staff in the emergency care area. There shall be in-hospital support by members of the medical staff for at least medical, surgical, orthopedic, obstetric, pediatric, and anesthesia services. Specialty consultation shall be available within 30 minutes, or two-way voice communication is available for the initial consultation.

(b) Type II offers emergency care 24 hours a day, with at least one physician experienced in emergency care on duty in the emergency care area, and with specialty consultation available within 30 minutes by members of the medical staff.

(c) Type III offers emergency care 24 hours a day, with at least one physician available to the emergency care area within approximately 30 minutes through a medical staff call roster. Specialty consultation shall be available by request of the attending medical staff member by transfer to a type I or type II hospital where care can be provided.

(d) Type IV offers emergency first aid treatment to patients, staff, and visitors; and to persons who may be unaware of, or unable to immediately reach services in other facilities.

(2) The emergency service shall be organized and staffed by qualified individuals based on the defined capability of the hospital.

(a) Administrative direction of emergency services shall be provided by an individual appointed and authorized by the

hospital administrator.

(b) Medical direction of emergency services shall be defined in writing and provided by one or more members of the medical staff. The medical staff shall provide back-up and on-call coverage for emergency services and as needed for emergency specialty services.

(c) The evaluation and treatment of a patient who presents himself or is brought to the emergency care area shall be the responsibility of a licensed practitioner and shall include an appropriate medical screening examination, stabilizing treatment, and, if necessary for definitive treatment, an appropriate transfer to another medical facility that has agreed to accept the patient for care.

(d) The priority by which persons seeking emergency care are seen by a physician may be determined by trained personnel using guidelines established by the emergency room director and approved by the medical staff.

(e) Rosters designating medical staff members on duty or on call for primary coverage and specialty consultation shall be posted in the emergency care area.

(f) A designated registered nurse who is qualified by relevant training, experience, and current competence in emergency care shall supervise the care provided by all nursing service personnel in the department.

(i) The number of nursing service personnel shall be sufficient for the types and volume of patients served.

(ii) Type I and II emergency departments shall have at least one registered nurse with Advanced Cardiac Life Support certification, and sufficient number of other nursing staff assigned and on duty within the emergency care area.

(iii) The emergency nurse supervisor shall participate in internal committee activities concerned with the emergency service.

(g) The emergency service shall be integrated with other departments in the hospital.

(i) Clinical laboratory services with the capability of performing all routine studies and standard analyses of blood, urine, and other body fluids shall be available. A supply of blood shall be available at all times.

(ii) Diagnostic radiology services shall be available at all times.

(h) The duties and responsibilities of all personnel, including physicians and nurses, providing care within the emergency service area shall be defined in writing.

(3) Each hospital shall define its scope of emergency services in writing and implement a plan for emergency care, based on community need and on the capability of the hospital.

(a) Each hospital shall comply with federal anti-dumping regulations as defined in CFR 489.20 and 489.24.

(b) The role of the emergency service in the hospital's disaster plans shall be defined.

(c) Each hospital must have a communication system that permits instant contact with law enforcement agencies, rescue squads, ambulance services, and other emergency services within the community.

(d) Emergency department policies and protocols shall address the care, security, and control of prisoners or people to be detained for police or protective custody.

(e) Emergency department policies and protocols shall address the provision of care to an unaccompanied minor not accompanied by parent or guardian, or to an unaccompanied unconscious patient.

(f) Emergency department policies and procedures shall address the evaluation and handling of alleged or suspected child or adult abuse cases. Criteria shall be developed to alert emergency department and service personnel to possible child or adult abuse. The criteria shall address:

- (i) suspected physical assault;
- (ii) suspected rape or sexual molestation;

(iii) suspected domestic abuse of elders, spouses, partners and children;

(iv) the collection, retention, and safeguarding of specimens, photographs, and other evidentiary materials; and

(v) visual and auditory privacy during examination and consultation of patients.

(g) A list shall be available in the emergency department of private and public community agencies and resources that provide, arrange, evaluate and care for the victims of abuse.

(h) Emergency department policies and procedures shall address the handling of hazardous materials and contaminated patients.

(i) Emergency department policies and procedures shall address the reporting of persons dead-on-arrival to the proper authorities including the legal requirements for the collection and preservation of evidence.

(4) The hospital shall in a timely manner make reasonable effort to contact the guardian, parents, or next of kin of any unaccompanied minor, or any unaccompanied unconscious patient admitted to the emergency department.

#### **R432-100-18. Perinatal Services.**

(1) Each hospital shall comply with the requirements of this section and shall designate its capability to provide perinatal (antepartum, labor, delivery, postpartum and nursery) care in accordance with Level I basic, Level II specialty, or Level III sub-specialty or tertiary care as described in the Guidelines for Perinatal Care, Sixth Edition and the Guidelines for Design and Construction of Health Care Facilities, 2010 Edition, which are incorporated by reference.

(a) A qualified member of the hospital staff shall provide administrative, medical and nursing direction and oversight for perinatal services according to each hospital's designated level of care, Level I, IIA, IIB, IIIA, IIIB or IIIC.

(b) A qualified registered nurse shall be immediately available at all hours of the day and as well as sufficient numbers of trained competent staff to meet the designated level.

(c) Support personnel shall be available to the perinatal care service according to each hospital's designated level of care.

(2) Each hospital shall establish and implement security protocols for perinatal patients.

(3) The perinatal department shall include facilities and equipment for antepartum, labor and delivery, nursery, postpartum, and optional birthing rooms.

(a) Perinatal areas shall be located and arranged to avoid non-related traffic to and from other areas.

(b) The hospital shall isolate patients with infections or other communicable conditions. The use of maternity rooms for patients other than maternity patients shall be restricted according to hospital policy.

(c) Each hospital shall have at least one surgical suite for operative delivery.

(d) Equipment and supplies shall be immediately available and maintained for the mother and newborn, including:

- (i) furnishings suitable for labor, birth, and recovery;
- (ii) oxygen with flow meters and masks or equivalent;
- (iii) mechanical suction and bulb suction;
- (iv) resuscitation equipment;
- (v) emergency medications, intravenous fluids, and related supplies and equipment;
- (vi) a device to assess fetal heart rate;
- (vii) equipment to monitor and maintain the optimum body temperature of the newborn;
- (viii) a clock capable of showing seconds;
- (ix) an adjustable examination light; and
- (x) a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements. The unit must be capable of administering oxygen and suctioning.

(e) The hospital shall maintain a delivery room record keeping system for cross referencing information with other departments.

(4) If birthing rooms are provided, they shall be equipped in accordance with 100-17(3(d)).

(5) The nursery shall include facilities and equipment according to its designated level of care: Level I - Basic Newborn Care; Level II - Specialty Continuing Care; and Level III - Sub-specialty or Tertiary Newborn Intensive Care including an individual bassinets for each infant; with space between bassinets as follows:

(a) Level I Basic: Full Term or Well Baby Nursery 24 inches between bassinets;

(b) Level II Specialty: Continuous Care Nursery four feet between bassinets for Continuing Care nurseries;

(c) Level III Sub-specialty: Newborn Intensive Care Nursery four feet between bassinets.

(d) accurate scales; and

(e) a wall thermometer;

(6) The following equipment and supplies shall be available:

(a) an individual thermometer, or one with disposable tips, for each infant;

(b) a supply of medication shall be immediately available for emergencies;

(c) a covered soiled-diaper container with removable lining;

(d) a linen hamper with removable bag for soiled linen other than diapers;

(e) a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements;

(f) oxygen, oxygen equipment, and suction equipment; and

(g) an oxygen concentration monitoring device.

(7) Temperature shall be maintained between 70-80 degrees Fahrenheit in the nursery area.

(8) Infant formula storage space shall be available that conforms to the manufacturer's recommendations. Only single-use bottles shall be used for newborn feeding.

(9) A suspect nursery or isolation area shall be available. Equipment and supplies shall be provided for the isolation area.

(a) Isolation facilities shall be used for any infant who:

(i) has a communicable disease;

(ii) is delivered of an ill mother infected with a communicable disease;

(iii) is readmitted after discharge from a hospital; or

(iv) is delivered outside the hospital.

(b) There shall be separate hand washing facilities for the isolation area.

(10) Each hospital shall comply with the following provisions:

(a) No attempt shall be made to delay the imminent, normal birth of a child;

(b) A prophylactic solution in accordance with R386-702-9 shall be instilled in the eyes of the infant within three hours of birth;

(c) Metabolic screening shall be performed in accordance with Section 26-10-6 and R398-1; and

(d) A newborn hearing screening shall be performed in accordance with R398-2.

#### **R432-100-19. Pediatric Services.**

(1) If the hospital provides pediatric services, those services shall be under the direction of a member of the medical staff who is experienced in pediatrics and whose functions and scope of responsibility are defined by the medical staff.

(a) A pediatrics qualified registered nurse must supervise nursing care and must supervise the documentation of the implementation of pediatric patient care on an interdisciplinary plan of care.

(b) If the hospital provides a pediatric unit, it shall have an interdisciplinary committee responsible for policy development and review of practice within the unit. This committee must include representatives from administration, the medical and nursing staff, and rehabilitative support staff.

(c) Hospitals admitting pediatric patients shall have written policies and procedures specifying the criteria for admission to the hospital and conditions requiring transfer when indicated. These policies and procedures shall be based upon the resources available at the hospital, specifically, in terms of personnel, space, equipment, and supplies.

(d) The hospital shall assess all pediatric patients for maturity and development. Information obtained from the maturity and development assessment must be incorporated into the plan of care.

(e) The hospital shall establish and implement security protocols for pediatric patients.

(f) The hospital shall provide a safe area for diversional play activities.

(2) Hospitals admitting pediatric patients shall have equipment and supplies in accordance with the hospital's scope of pediatric services.

(3) The hospital shall have written guidelines for the placement or room assignment of pediatric patients according to patient acuity under usual, specific, or unusual conditions within the hospital. The guidelines shall address the use of cribs, bassinets, or beds; including the proper use of restraints, bed rails, and other safety devices.

(a) The hospital shall place infant patients in beds where frequent observation is possible.

(b) Pediatric patients other than infants shall be placed in beds to allow frequent observation according to each patient's assessed care needs.

(4) Personnel working with pediatric patients shall have specific training and experience relating to the care of pediatric patients.

(5) Orientation and inservice training for pediatric care staff shall include pediatric specific training on drugs and toxicology, intravenous therapy, pediatric emergency procedures, infant and child nutrition, the emotional needs and behavioral management of hospitalized children, child abuse and neglect, and other topics according to the needs of the pediatric patients.

#### **R432-100-20. Respiratory Care Services.**

(1) Administrative direction of respiratory care services shall be provided by a person authorized by the hospital administrator.

(2) The respiratory care service shall be under the medical direction of a member of the medical staff who has the responsibility and authority for the overall direction of respiratory care services.

(a) When the scope of services warrants, respiratory care services shall be supervised by a technical director who is registered or certified by the National Board For Respiratory Therapy, Inc., or has the equivalent education, training, and experience.

(b) The technical director shall inform physicians about the use and potential hazards in the use of any respiratory care equipment.

(3) Respiratory care services shall be provided to patients in accordance with a written prescription of the responsible licensed practitioner which specifies the type, frequency, and duration of the treatment; and when appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration.

(a) The hospital must have equipment to perform any pulmonary function study or blood-gas analysis provided by the hospital.

(b) Resuscitation, ventilatory, and oxygenation support equipment shall be available in accordance with the needs of the patient population served.

**R432-100-21. Rehabilitation Therapy Services.**

(1) If rehabilitation therapy services are provided by the hospital, the services may include physical therapy, speech therapy, and occupational therapy.

(a) Rehabilitation therapy services shall be directed by a qualified, licensed provider who shall have clinical responsibility for the specific therapy service.

(b) Patient services performed by support personnel, shall be commensurate with each person's documented training and experience.

(c) Rehabilitation therapy services may be initiated by a member of the medical staff or by a licensed rehabilitation therapist.

(i) A physician's written request for services must include reference to the diagnosis or problems for which treatment is planned, and any contraindications.

(ii) The patient's physician shall retain responsibility for the specific medical problem or condition for which the referral was made.

(2) Rehabilitation therapy services provided to the patient shall include evaluation of the patient, establishment of goals, development of a plan of treatment, regular and frequent assessment, maintenance of treatment and progress records, and periodic assessment of the quality and appropriateness of the care provided.

**R432-100-22. Radiology Services.**

(1) Each hospital shall provide an organized radiology department offering services that are in accordance with the needs and size of the institution.

(a) Administrative direction of radiology services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of the department shall be provided by a member of the medical staff.

(i) If a radiologist is not the medical director of the radiology services, the services of a radiologist shall be retained on a part-time basis.

(ii) If a radiologist provides services on less than a full-time basis, the time commitment shall allow the radiologist to complete the necessary functions to meet the radiological needs of the patients and the medical staff.

(c) The radiologist is responsible to:

(i) maintain a quality control program that minimizes unnecessary duplication of radiographic studies and maximizes the quality of diagnostic information available;

(ii) develop technique charts that include part, thickness, exposure factors, focal film distances and whether a grid or screen technique; and

(iii) assure the availability of information regarding the purpose and yield of radiological procedures and the risks of radiation.

(d) At least one licensed radiologic technologist shall be on duty or available when needed.

(e) Diagnostic radiology services shall be performed only at the request of a member of the medical staff or other persons authorized by the hospital.

(f) If radiation oncology services are provided, the following applies:

(i) Physicians and staff who provide radiation oncology services have delineated privileges;

(ii) The medical director of the radiation oncology services is a physician member of the medical staff who is qualified by education and experience in radiation oncology.

(2) Radiologic patient records shall be integrated with the

hospital patient record.

(a) All requests for radiologic services shall contain the reasons for the examinations.

(b) Authenticated reports of these examinations shall be filed in the patient's medical record as soon as possible. Radiological film shall be retained in accordance with hospital policy.

(c) If requested by the attending physician and if the quality of the radiograph permits, the radiology department may officially enter the interpretations of the radiologic examinations performed outside of the hospital in the patient's medical record.

(d) Radiotherapy summaries shall be filed in the patient's medical record. A copy may be filed in the radiotherapy department. The radiotherapy summary shall be forwarded to the referring physician. Unless otherwise justified, the medical record of the patient receiving radiotherapy for treatment or palliation of a malignancy shall reflect the histologically substantiated diagnosis.

**R432-100-23. Laboratory and Pathology Services.**

(1) Each hospital shall provide laboratory and pathology services that are in accordance with the needs and size of the institution.

(a) Administrative direction of laboratory and pathology services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of laboratory and pathology services shall be provided by a member of the medical staff.

(2) Laboratory and pathology services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

(3) Laboratories certified by a Health Care Financing Administration (HCFA) approved accrediting agency are determined to be in compliance with this section. Accrediting agency inspection reports shall be available for Department review.

**R432-100-24. Blood Services.**

(1) Hospital blood services are defined as follows:

(a) A "donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(b) A "transfusion service" means a facility that stores, determines compatibility, transfuses blood and blood components, and monitors transfused patients for any ill effect.

(c) A "blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(2) The hospital blood service shall establish and maintain an appropriate blood inventory in the hospital at all times, have immediate access to community blood services or other institutions, or have an up-to-date list of donors, equipment and trained personnel to draw and process blood.

(a) Blood or blood components must be collected, stored, and handled in such manner that they retain potency and safety.

(b) Blood or blood components must be properly processed, tested, and labeled.

(3) If the hospital operates a donor center, transfusion service or a blood bank the donor center, transfusion service, or blood bank must be accredited.

(a) Hospital blood banks and donor centers must be accredited by the Food and Drug Administration (FDA).

(b) Hospital transfusion services must be certified by the Health Care Financing Administration to meet Clinical Laboratory Improvement Amendments of 1988 (CLIA), or any accrediting organization approved by the Health Care Financing Administration.

(4) Results of the accrediting organization survey, or



current CLIA certification must be available for Department review.

**R432-100-25. Pharmacy Services.**

(1) The pharmacy of a hospital currently accredited and conforming to the standards of JCAHO shall be determined to be in compliance with these rules.

(a) If a hospital is not accredited by JCAHO, then the pharmacy of such hospital shall comply with rules in this section.

(b) The pharmacy department and service shall be directed by a licensed pharmacist.

(i) Competent personnel shall be employed in keeping with the size and activity of the department and service. If the hospital uses only a drug room and the size of the hospital does not warrant a full-time pharmacist, a consultant pharmacist may be employed.

(ii) The pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy.

(iii) Provision shall be made for access to emergency pharmaceutical services.

(iv) The pharmacist shall be trained in the specific functions and scope of the hospital pharmacy.

(2) Facilities shall be provided for the safe storage, preparation, safeguarding, and dispensing of drugs.

(a) All floor-stocks shall be kept in secure areas in the patient care units.

(b) Double-locked storage shall be provided for controlled substances. Electronically controlled storage of narcotics may be permitted if automated dispensing technology is utilized by the hospital.

(c) Medications stored at room temperatures shall be maintained within 59 and 80 degrees F.

(d) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(e) A current toxicology reference, and other references as needed for effective pharmacy operation and professional information shall be available.

(3) Records shall be kept of the transactions of the pharmacy and medication storage unit and coordinated with other hospital records.

(a) There shall be a recorded and signed floor-stock controlled substance count once per shift or the facility must use automated dispensing technology in accordance with R156-17b-619.

(b) Hospitals that utilize automated dispensing technology must implement a system for accounting of controlled substances dispensed by the automated dispensing system.

(c) The record shall list the name of the patient receiving the controlled substance, the date, type of substance, dosage, and signature of the person administering the substance.

(4) Written policies and procedures that pertain to the intra-hospital drug distribution system and the safe administration of drugs shall be developed by the director of the pharmaceutical department or service in concert with the medical staff.

(a) Drugs that are provided to floor units shall be administered in accordance with hospital policies and procedures.

(b) The medical staff in conjunction with the pharmacist shall establish standard stop orders for all medications not specifically prescribed as to time or number of doses.

(c) The pharmacist shall have full responsibility for dispensing of all drugs.

(d) There shall be a policy stating who may have access to the pharmacy or drug room when the pharmacist is not available.

(e) There shall be a documentation system for the accounting and replacement of drugs, including narcotics, to the

emergency department.

(f) Medication errors and adverse drug reactions shall be reported immediately in accordance with written procedures including notification of the practitioner who ordered the drug.

**R432-100-26. Social Services.**

(1) In a hospital with an organized social services department, a qualified social worker shall direct the provision of social work services. If a hospital does not have a full or part-time qualified social worker, the administrator shall designate an employee to coordinate and assure the provision of social work services. The social worker, or designee shall be knowledgeable about community agencies, institutions, and other resources.

(2) In a hospital without an organized social services department, the hospital shall obtain consultation from a qualified social worker to provide social work services.

(3) The staff shall be oriented to help the patient make the best use of available inpatient, outpatient, extended care, home health, and hospice services.

(4) Social Services shall be integrated with other departments and services of the hospital.

**R432-100-27. Psychiatric Services.**

(1) If provided by the hospital, psychiatric services shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of service provided.

(a) If the hospital does not provide psychiatric services, the hospital must have procedures to transfer patients to a facility that can provide the necessary psychiatric services.

(b) Administrative direction of psychiatric services shall be provided by a person appointed and authorized by the hospital administrator.

(c) Medical direction of psychiatric services shall be defined in writing and provided by a qualified physician who is a member of the medical staff.

(d) Psychiatric services shall comply with the following sections of R432-101, Specialty Hospitals, Psychiatric:

- (i) R432-101-13 Patient Security;
- (ii) R432-101-14 Special Treatment Procedures;
- (iii) R432-101-17 Admission and Discharge;
- (iv) R432-101-20 Inpatient Services;
- (v) R432-101-21 Adolescent or Child Treatment Programs;
- (vi) R432-101-22 Residential Treatment Services;
- (vii) R432-101-23 Physical Restraints, Seclusion, and Behavior Management;
- (viii) R432-101-24 Involuntary Medication Administration; and
- (ix) R432-101-35 Partial Hospitalization Services.

(2) If outreach services are ordered by a physician as part of the plan of care or hospital discharge plan, the outreach services may be provided in a clinic, physician's office, or the patient's home.

**R432-100-28. Substance Abuse Rehabilitation Services.**

(1) A hospital may provide inpatient or outpatient substance abuse rehabilitation services. A hospital that provides substance abuse rehabilitation services shall be staffed to meet the needs of the patients or clients.

(a) Administrative direction shall be provided by an individual appointed and authorized by the hospital administrator.

(b) Medical direction shall be defined in writing and provided by a qualified physician who is a member of the medical staff.

(c) Nursing services shall be under the direction of a full-time registered nurse.

(d) Substance abuse counseling shall be under the

direction of a licensed mental health therapist.

(e) A licensed substance abuse counselor may serve as the primary therapist under the direction of an individual licensed under the Mental Health Practice Act.

(f) An interdisciplinary team including the physician, registered nurse, licensed mental health therapist, and substance abuse counselor shall be responsible for program and treatment services. The patient or client may be included as a member of the interdisciplinary team.

(2) Substance abuse rehabilitation services shall include at least the following:

(a) Detoxification care shall be available for the systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling, or nursing care.

(b) Counseling shall be available in at least one of the following areas: individual, group, or family counseling. In addition, there shall be provisions for educational, employment, or other counseling as needed.

(c) Treatment services shall be coordinated with other hospital and community services to assure continuity of care through discharge planning and aftercare referrals. Counselors may refer patients or clients to public or private agencies for substance abuse rehabilitation, and employment and educational counseling.

(d) A comprehensive assessment shall be documented that includes at least a physical examination, a psychiatric and psychosocial assessment, and a social assessment.

(3) The confidentiality of medical records of substance abuse patients and clients shall be maintained according to the federal guidelines in 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(4) Residential treatment services may be provided under the direction of the medical director or his designee. Residential treatment services shall comply with R432-101-22.

#### **R432-100-29. Outpatient Services.**

(1) Outpatient care services provided by the hospital shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of services provided.

(2) Outpatient care shall meet the same standards of care that apply to inpatient care.

(3) Outpatient care includes hospital owned outpatient services, and hospital satellite services.

#### **R432-100-30. Respite Services.**

(1) A remote-rural general acute hospital with a federal swing bed designation may provide respite services to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for an individual.

(a) The hospital may provide respite care services and need comply only with the requirements of this section.

(b) If, however, the hospital provides respite care to an individual for longer than 14 consecutive days, the hospital must admit the individual as an inpatient subject to the requirements of this rule applicable to non-respite inpatient admissions.

(2) Respite services may be provided at an hourly rate or daily rate.

(3) The hospital shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(4) The hospital shall document the individual's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(5) The hospital must complete the following:

(a) a Level 1 Pre-admission Screening upon the person's admission for respite services; and

(b) a service agreement which will serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for

activities of daily living and diet orders.

(6) The hospital shall have written policies and procedures available to staff regarding the respite care patients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and

(h) handling patient funds.

(7) The facility shall provide a copy of the Resident Rights to the patient upon admission.

(8) The facility shall maintain a record for each patient who receives respite services which includes:

(a) a service agreement;

(b) demographic information and patient identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the patient in service;

(f) accident and injury reports; and

(g) a post-service summary.

(9) If a patient has an advanced directive, the facility shall file a copy of the directive in the record and inform staff.

(10) Retention and storage of records shall comply with R432-100-33.

(11) The hospital shall provide for confidentiality and release of information in accordance with R432-100-33.

#### **R432-100-31. Pet Therapy.**

(1) If a hospital utilizes pet therapy, household pets such as dogs, cats, birds, fish, and hamsters may be permitted.

(a) Pets must be clean and disease free.

(b) The immediate environment of the pets must be clean.

(c) Small pets shall be kept in appropriate enclosures.

(d) Pets that are not confined shall be kept under leash control or voice control.

(e) Pets that are kept at the hospital, or are frequent visitors shall have current vaccinations, including rabies, as recommended by a licensed veterinarian.

(f) Hospitals with birds shall have procedures in place which protect patients, staff, and visitors from psittacosis.

(2) Hospitals that permit pets to remain overnight shall have policies and procedures for the care, housing and feeding of such pets; and for the proper storage of pet food and supplies.

(3) Pets shall not be permitted in any area where their presence would create a significant health or safety hazard or nuisance to others.

(4) Pets shall not be permitted in food preparation and storage areas.

(5) Persons caring for pets shall not have patient care or food handling responsibilities.

#### **R432-100-32. Dietary Service.**

(1) There shall be an organized dietary department under the supervision of a certified dietitian or a qualified individual who, by education or specialized training and experience, is knowledgeable in food service management. If the latter is head of the department, there must be a registered dietitian on a full-time, regular part-time, or consulting basis.

(a) Direction of the dietary service shall be provided by a person whose qualifications, authority, responsibilities and duties are approved by the administrator. The director shall have the administrative responsibility for the dietary service.

(b) If the services of a certified dietitian are used on less

than a full-time basis, the time commitment shall permit performance of all necessary functions to meet the dietary needs of the patients.

(c) There shall be food service personnel to perform all necessary functions.

(2) If dietetic services are provided by an outside provider, the outside provider shall comply with the standards of this section.

(3) A current diet manual approved by the dietary department and the medical staff shall be available to dietary, medical, and nursing personnel.

(a) The food and nutritional needs of patients shall be met in accordance with the physician's orders.

(b) Regular menus and modifications for basic therapeutic diets shall be written at least one week in advance and posted in the kitchen.

(c) The menus shall provide for a variety of foods served in adequate amounts at each meal.

(d) At least three meals shall be served daily with not more than a 14-hour span between the evening meal and breakfast. If a substantial evening snack is offered, a 16-hour time span is permitted.

(e) A source of non-neutral exchanged water shall be provided for use in preparation of no sodium meals, snacks, and beverages.

(4) The dietary department shall comply with the Utah Department of Health Food Service Sanitation Rule R392-100.

(a) The dietary facilities and equipment shall be in compliance with federal, state, and local sanitation and safety laws and rules.

(b) Traffic of unauthorized individuals through food preparation areas shall be controlled.

(5) Written reports of inspections by state or local health departments shall be on file at the hospital and available for Department review.

(6) The dietitian or authorized designee is responsible for documenting nutritional information in the patient's medical record.

(7) Diets shall be ordered by a member of the medical staff and transmitted in writing to the dietary department.

#### **R432-100-33. Telemedicine Services.**

If a hospital participates in telemedicine, it shall develop and implement policies governing the practice of telemedicine in accordance with the scope and practice of the hospital.

(1) The policies shall address security, access and retention of telemetric data.

(2) The policies shall define the privileging of physicians and allied health professionals who participate in telemedicine.

#### **R432-100-34. Medical Records.**

(1) The hospital shall establish a medical records department or service that is responsible for the administration, custody and maintenance of medical records.

(a) The administrative direction of the department shall be established by the hospital administrator and correspond to the organizational structure and policies of the hospital.

(b) The medical records department shall retain the technical services of either a Registered Health Information Administrator or a Registered Health Information Technician through employment or consultation. If retained by consultation, visits shall be at least quarterly and documented through written reports to the hospital administrator.

(2) The medical records department shall provide secure storage, controlled access, prompt retrieval, and equipment and facilities to review medical records.

(a) Medical records shall be available for use or review by members of the medical and professional staff; authorized hospital personnel and agents; persons authorized by the patient

through a consent form; and Department representatives to determine compliance with licensing rules.

(b) Medical records may be stored in multiple locations providing the record is able to be retrieved or accessed in a reasonable time period.

(c) If computer terminals are utilized for patient charting, the hospital shall have policies governing access and identification codes, security, and information retention.

(d) The hospital medical record shall be indexed according to diagnosis, procedure, demographic information and physician or licensed health practitioner. The indexes shall be current within six months following discharge of the patient.

(e) Original medical records are the property of the hospital and shall not be removed from the control of the hospital or the hospital's agent as defined by policy except by court order or subpoena.

(f) Medical records for persons who have received or requested admission to alcohol or drug programs shall comply with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(3) All medical record entries shall be legible, complete, authenticated, and dated by the person responsible for ordering the service, providing or evaluating the service, or making the entry. Prepared transcriptions of dictated reports, evaluations and consultations must be reviewed by the author before authentication.

(a) The authentication may include written signatures, computer key, or other methods approved by the governing body and medical staff to identify the name and discipline of the person making the entry.

(b) Use of computer key or other methods to identify the author of a medical record entry is not assignable or to be delegated to another person.

(c) There shall be a current list of persons approved to use these methods of authentication. Hospital policies shall include appropriate sanctions for the unauthorized or improper use of computer codes.

(d) Verbal orders for the care and treatment of the patient shall be accepted and transcribed by qualified personnel and authenticated within 30 days of the patient's discharge.

(4) Patient records shall be organized according to hospital policy.

(a) Medical records shall be reviewed at least quarterly for completeness, accuracy, and adherence to hospital policy.

(b) Records of discharged patients shall be collected, assembled, reviewed for completeness, and authenticated within 30 days of the patient's discharge.

(c) Medical records shall be retained for at least seven years. Medical records of minors shall be kept until the age of eighteen plus four years, but in no case less than seven years.

(d) The Hospital may destroy medical records after retaining them for the minimum time period. Prior to destroying medical records, the hospital must notify the public by publishing a notice in a newspaper of statewide distribution a minimum of once a week for three consecutive weeks to allow a former patient to access the patient's records.

(e) The hospital shall permanently retain a master patient/person index that shall include:

- (i) the patient name;
- (ii) the medical record number;
- (iii) the date of birth;
- (iv) the admission and discharge dates; and
- (v) the name of each attending physician.

(f) If a hospital ceases operation, the hospital shall make provision for secure, safe storage and prompt retrieval of all medical records, patient indexes and discharges for the period specified in R432-100-33(4)(c). The hospital may arrange for storage of medical records with another hospital, or an approved medical record storage facility, or may return patient medical

records to the attending physician if the physician is still in the community.

(5) A complete medical record shall be established and maintained for each patient admitted to, or who receives hospital services. Emergency and outpatient records shall document the service rendered, and shall contain other pertinent information in accordance with hospital policy.

(a) Each medical record shall contain patient identification and demographic information to include at least the patient's name, address, date of birth, sex, and emergency contact information.

(b) Each medical record shall contain initial or admitting medical history, physical and other examinations or evaluations. Recent histories and examinations may be substituted if updated to include changes that reflect the patient's current status.

(c) Each medical record shall contain admitting, secondary and principal diagnoses.

(d) Each medical record shall contain results of consultive evaluations and findings by persons involved in the care of the patient.

(e) Each medical record shall contain documentation of complications, hospital acquired infections, and unfavorable reactions to medications, treatments, and anesthesia.

(f) Each medical record shall contain properly executed informed consent documents for all procedures and treatments ordered for, and received by, the patient.

(g) Each medical record shall document that the facility requested of each admitted person whether the person has initiated an advanced directive as defined in the Advance Health Care Directive Act, UCA 75-2a.

(h) Each medical record shall contain all practitioner orders, nursing notes, reports of treatment, medication records, laboratory and radiological reports, vital signs and other information that documents the patient condition and status.

(i) Each medical record shall contain a discharge summary including outcome of hospitalization, disposition of case with an autopsy report when indicated, or provisions for follow-up.

(j) Medical records of deceased patients shall contain a completed Inquiry of Anatomical Gift form or a modified hospital death form which has been approved by the Utah Department of Health as required by Section 26-28-6, UCA.

(k) Medical records of surgical patients shall contain a pre-operative history and physical examination; surgeon's diagnosis; an operative report describing a description of findings; an anesthesia report including dosage and duration of all anesthetic agents and all pertinent events during the induction, maintenance, and emergence from anesthesia; the technical procedures used; the specimen removed; the post-operative diagnosis; and the name of the primary surgeon and any assistants written or dictated by the surgeon within 24 hours after the operation.

(l) Medical records of obstetrical patients shall contain a relevant family history, a pre-natal examination, the length of labor and type of delivery with related notes, the anesthesia or analgesia record, the Rh status and immune globulin administration when indicated, a serological test for syphilis, and a discharge summary for complicated deliveries or final progress note for uncomplicated deliveries.

(m) Medical records of newborn infants shall contain the following documentation in addition to the requirements for obstetrical medical records:

(i) Documentation must include a copy of the mother's delivery room record. In adoption cases where the identity of the mother is confidential, inclusion and access to the mother's delivery room record shall be according to hospital policy.

(ii) Documentation must include the date and hour of birth, period of gestation, sex, reactions after birth, delivery room care, temperature, weight, time of first urination, and number, character, and consistency of stools.

(iii) Documentation must include a record of the physical examination completed at birth and discharge, record of ophthalmic prophylaxis, and the identification number of the newborn screening kit, referred to in R398-1.

(iv) If the infant is discharged to any person other than the infant's parents, the hospital shall record the authorization by the parents, state agency, or court authority.

(v) Documentation of the record and results of the newborn hearing screening according to Section 26-10-6, UCA and R398-2-6.

(n) Emergency department patient medical records shall be integrated into the hospital medical record and include time and means of arrival, emergency care given to the patient prior to arrival, history and physical findings, lab and x-ray reports, diagnosis, record of treatment, and disposition and discharge instructions.

(o) Patient medical social services records shall include a medical-social or psycho-social study of referred inpatients and outpatients; the financial status of the patient, social therapy and rehabilitation of patients, environmental investigations for attending physicians, and cooperative activities with community agencies.

(p) Medical records of patients receiving rehabilitation therapy shall include a written plan of care appropriate to the diagnosis and condition, a problem list, and short and long term goals.

(6) The medical records department shall maintain records, reports and documentation of admissions, discharges, and the number of autopsies performed.

(7) The medical records department shall maintain vital statistic registries for births, deaths, and the number of operations performed. The medical records department shall report vital statistics data in accordance with the Vital Statistics Act, Utah Health Code, (26-2, UCA).

#### **R432-100-35. Central Supply Services.**

(1) The central supply service supervisor shall be qualified for the position by education, training, and experience.

(2) The hospital shall provide space and equipment for the cleaning, disinfecting, packaging, sterilizing, storing, and distributing of medical and surgical patient care supplies.

(a) A hospital central service area shall provide for the following:

(i) A decontamination area which shall be separated by a barrier or divider to allow the receiving, cleaning, and disinfection functions to be performed separately from all other central service functions;

(ii) A linen assembly or pack-making area which shall have ventilation to control lint. The linen assembly or pack-making area shall be separated from the general sterilization and processing area.

(iii) The sterilization area shall contain hospital sterilizers with approved controls and safety features.

(b) The accuracy of the sterilizers' performance shall be checked by a method that includes a permanent record of each run.

(c) Sterilizers shall be tested by biological monitors at least weekly.

(d) If gas sterilizers are used, they shall be inspected, maintained, and operated in accordance with the manufacturer's recommendations.

(3) The storage area shall be separated into sterile and non-sterile areas. The storage area shall have temperature and humidity controls, and shall be free of excessive moisture and dust. Outside shipping cartons shall not be stored in this area.

(4) During each shift that the central service area is staffed, counter tops and tables shall be wiped with a broad spectrum disinfectant.

(5) All apparel worn in central supply shall be issued and

laundered according to hospital policy.

**R432-100-36. Laundry Service.**

(1) Direction of the laundry service shall be provided by a person whose qualifications, authority, responsibilities and duties are approved by the administrator.

(2) Hospitals using commercial linen services shall require written assurance from the commercial service that standards in this subsection are maintained.

(a) Clean linen shall be completely packaged and protected from contamination until received by the hospital.

(b) The use of a commercial linen service does not relieve the hospital from its quality improvement responsibilities.

(3) Hospitals that maintain an in-house laundry service must have equipment, supplies and staff available to meet the needs of the patients.

(a) Soiled linen shall be collected in a manner to minimize cross-contamination. Containers shall be properly closed as filled and before further transport.

(i) Soiled linen shall be sorted only in a sorting area.

(ii) Handwashing is required after handling soiled linen and prior to handling clean items.

(iii) Employees handling soiled linen shall wear protective clothing which must be removed before leaving the soiled work area.

(iv) Soiled linen shall be transported separately from clean linen.

(b) The hospital shall maintain a supply of clean linen.

(i) Clean linen shall be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(ii) Clean linen shall be stored in enclosed closet areas or carts.

(iii) Clean linen shall be covered during transport.

(4) The hospital is responsible to launder employee scrubs that are worn in the following areas:

(a) surgical areas;

(b) other areas as required by the Occupational Health and Safety Act.

(5) If hospital employee scrubs are designated as uniforms that may be worn to and from work, policies and procedures shall be developed and implemented defining the scope and usage of scrubs as uniforms including hospital storage of employee scrubs, and provisions for hospital-provided scrubs in case of contamination.

**R432-100-37. Housekeeping Services.**

(1) There shall be housekeeping services to maintain a clean, safe, sanitary, and healthful environment in the hospital.

(2) If the hospital contracts for housekeeping services with an outside service, there shall be a signed and dated agreement that details the services provided.

(3) The hospital shall provide safe, secure storage of cleaners and chemicals. Cleaners and chemicals stored in areas that may be accessible to patients shall be kept secure in accordance with hospital policy.

(4) Storage and supplies in all areas of the hospital shall be stored at least four inches off the floor, and at least 18 inches below the lowest portion of the sprinkler system.

(5) Personnel engaged in housekeeping or laundry services may not be engaged simultaneously in food service or patient care.

(6) If personnel work in food or direct patient care services, hospital policy shall be established and followed to govern the transition from housekeeping services to patient care.

**R432-100-38. Maintenance Services.**

(1) There shall be maintenance services to ensure that hospital equipment and grounds are maintained in a clean and

sanitary condition and in good repair at all times for the safety and well-being of patients, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of hospital maintenance.

(b) If the hospital contracts for maintenance services, there shall be a signed and dated agreement that details the services provided.

(c) A pest-control program shall be conducted to ensure the hospital is free from vermin and rodents.

(d) Entrances, exits, steps, ramps, and outside walkways shall be maintained in a safe condition with regard to snow, ice and other hazards.

(2) All patient care equipment shall be tested, calibrated and maintained in accordance with the specifications from the manufacturer.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Testing or calibration procedures conducted by an outside agency or service shall be documented and available for Department review.

(3) Hot water at public and patient faucets shall be delivered between 105 to 120 degrees Fahrenheit.

**R432-100-39. Emergency Operations Plan.**

(1) There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster which overwhelms the facility.

(2) The administrator or designee is responsible for the development of a plan, coordinated with applicable state and local emergency response partners and agencies. This plan shall be in writing and made available to all hospital staff.

(a) The plan shall be reviewed and updated as necessary and shall be available for review by the Department.

(b) The hospital's emergency operations plan must delineate individuals who will be in charge during any significant emergency.

(c) Lists of emergency partners shall be readily available, including multiple contact options. Emergency contact lists will be updated and maintained regularly by the hospital.

(3) The hospital's emergency operations plan shall address the following:

(a) an evacuation plan;

(b) delivery of essential care and services when additional persons are present at the hospital during an emergency;

(c) delivery of essential care and services to hospital occupants utilizing crisis standards of care when staff is reduced by an emergency; and

(d) must address planning, mitigation, response and recovery for each of the following six areas:

(i) emergency communications;

(ii) resources and assets;

(iii) safety and security;

(iv) staff responsibilities;

(v) utility management; and

(vi) patient clinical and supportive activities.

(4) The emergency operations plan shall be approved by the board and the hospital administrator.

(a) The hospital's emergency operations plan shall delineate the person or persons with decision-making authority to activate the emergency operations plan;

(b) The hospital's emergency response plan shall address those risks and threats identified in the facility's annual hazard vulnerability analysis.

(c) The hospital shall document all emergency incidents and responses.

(d) Disaster drills/exercises shall be held twice yearly according to threats identified in the facility's annual hazard vulnerability analysis.

(5) There shall be a fire emergency evacuation plan written

in consultation with qualified fire safety personnel. This plan may or may not be included in the facility's emergency operations plan. The evacuation routes shall be posted in prominent locations throughout the hospital. Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

(6) A hospital may exceed its licensed capacity by up to 20% in response to any incident that overwhelms the facility.

(a) A hospital which exceeds its licensed capacity under this provision shall notify the Department within 72 hours of exceeding its licensed capacity.

(b) Approval must be obtained from the Department to exceed 20% above licensed capacity.

(c) The Department may direct that the hospital reduce its patient census to its licensed capacity at any time.

**R432-100-40. Penalties.**

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

**KEY: health care facilities**

**February 10, 2016**

**Notice of Continuation November 5, 2015**

**26-21-5**

**26-21-2.1**

**26-21-20**

**R434. Health, Family Health and Preparedness, Primary Care and Rural Health.****R434-50. Assistance for People with Bleeding Disorders.****R434-50-1. Authority and Purpose.**

This rule is required by Section 26-47-103 (5). It implements Section 103 of the Health Care Assistance Act, Title 26, Chapter 47.

**R434-50-2. Definitions.**

The definitions as they appear in Section 26-47-103 (1) apply. In addition, "Department" means the Utah Department of Health.

**R434-50-3. Grant Application.**

An applicant responding to a request for grant application under this program shall submit its application as directed in the grant application guidance issued by the department.

**R434-50-4. Criteria for Awarding Grants.**

The department shall consider:

- (1) the extent to which the applicant:
  - (a) demonstrates that it will provide assistance to the greatest number of persons with bleeding disorders residing across the State of Utah;
  - (b) utilizes other sources of funding, including private funding, to provide bleeding disorder services; and
  - (c) provides:
    - (i) information that meets the requirements established in Section 26-47-103 (3);
    - (ii) a description of the individuals to be served by the grant;
    - (iii) the estimated number of individuals to be served with the grant award; and
    - (iv) the results of an assessment of need demonstrating the need for the bleeding disorder services that the grantee proposes to provide.
- (2) the cost to the person with a bleeding disorder for the bleeding disorder services;
- (3) the degree to which the applicant meets the requirements of the statute; and
- (4) the degree to which the application is feasible, clearly described, and ready to be implemented.

**R434-50-5. Qualified Service Recipients.**

(1) As required by Section 26-47-103 (1)(b)(iii)(D), the Department establishes that to meet the definition of a person with a bleeding disorder the individual's health insurance must be at or greater than 7.5 percent of the individual's adjusted gross income.

(2) The grantee must assure that each individual to whom it provides service under a grant awarded under this rule meets the requirements of this rule and Section 26-47-103 (1)(b).

**KEY: bleeding disorders, grants****March 1, 2011****26-47-103(5)(a)****Notice of Continuation March 1, 2016**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-13. Disclosure of Records.****R436-13-1. Integrity of Vital Records.**

To protect the integrity of vital records:

(1) The State Registrar and other custodians of vital records shall not permit inspection of, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record, unless the applicant has a direct and tangible interest in such record. In addition to the definition of direct, tangible, and legitimate interest as defined in Section 26-2-22, those who may or may not have a direct and tangible interest are as follows:

(a) The registrant, a member of the immediate family, the guardian, or a designated legal representative shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right.

(b) The natural parents of adopted children, when neither has custody, shall not be considered to have a direct and tangible interest.

(c) Commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

(2) The State Registrar or the local custodian may provide copies of certificates or disclose data from vital statistics records to federal, state, county, or municipal agencies of government requesting such data in the conduct of their official duties. Certificate copies or individual identifiable information may not be given by the receiving government agency to other agencies or individuals, or used for purposes not authorized at the time of the request.

(3) The State Registrar or local custodian shall not issue a certified copy of a record until a signed application has been received from the applicant. In emergencies, telephone requests may be accepted with documentation as to the identity of the person making the telephone request. Whenever it is determined necessary to establish an applicant's right to information from a vital record, the State Registrar or local custodian may also require identification of the applicant or a sworn statement.

(4) Nothing in this rule shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the birth and fetal death certificates or the "Information for Statistical Purposes Only" section of the Certificate of Marriage or Certificate of Divorce, Dissolution of Marriage, or Annulment unless specifically authorized by the State Registrar for statistical or research purposes or if authorized by a court of competent jurisdiction.

**R436-13-2. Identity Verification of Individuals Receiving Health Care Services.**

In accordance with Subsection 26-1-30 (30), the State Registrar may disclose information contained in vital records to health care providers, public health authorities, and health care insurers, including a qualified network as defined in Section 26-1-37(1), for the purpose of coordinating among themselves to verify the identity of the individuals they serve. This authority includes the provision of computerized matching methods to:

(1) distinguish living from deceased individuals who have received health care services; and

(2) disambiguate individual identities.

**KEY: vital statistics, copying processes, standards**

**February 17, 2016**

**26-2-22**

**Notice of Continuation March 21, 2013**



**R455. Heritage and Arts, History.****R455-6. State Register for Historic Resources and Archaeological Sites.****R455-6-1. Scope and Applicability.**

Purpose: To establish compatibility between the State and National Register. To establish standards for state landmarks consistent with Sections 9-8-306, 9-8-401, 9-8-402 and 9-8-403.

**R455-6-2. Definitions.**

A. Terms used in this rule are defined in Sections 9-8-302 and 9-8-402(1).

B. In addition:

1. "division" means the Division of State History;
2. "director" means the director of the Division of State History;
3. "board" means the Board of State History.
4. "property owner" means those persons or entities holding fee simple title to the property.

**R455-6-3. State Register for Historic Resources and Archaeological Sites.**

1. The State Register for properties and sites incorporates by reference, within this rule, 36 CFR 60.4, 1996 Edition for the selecting of properties and sites as historical places within Utah.

2. Properties or sites recommended for National Register consideration shall automatically be listed on the State Register after they have been recommended by the Board of State History for National Register listing and after the State Historic Preservation Officer has nominated them for listing on the National Register.

3. Should a property or site be found to be ineligible for the National Register by the Keeper of the National Register, National Park Service, that property may be reviewed for removal from the State Register.

4. Properties or sites may be removed from Century and State Registers only after notification to the owner and a hearing by the board, unless they have been entirely demolished, in which case they may be removed administratively by division staff following state procedures for removal.

**R455-6-4. State Landmark Listing for Archaeological and Anthropological Sites and Localities.**

Archaeological and anthropological sites of significance may be designated as Archaeological or Anthropological Landmarks by the Board of State History after nomination and with the written consent of the property owner.

**KEY: historic sites, national register, state register****August 11, 2011****Notice of Continuation February 2, 2016****9-8-302****9-8-306****9-8-401****9-8-402****9-8-403****63G-4-102**

**R455. Heritage and Arts, History.****R455-9. Board of State History as the Cultural Sites Review Committee Review Board.****R455-9-1. Scope and Applicability.**

Rules for the Board of State History, those federal regulations regarding activities of the Cultural Sites Review Committee, Review Board as established by Section 9-8-205(1)(d).

**R455-9-2. Definitions.**

1. "board" means the Board of State History, which functions as the committee;
2. "committee" means the Cultural Sites Review Committee, Review Board which is established for the state to comply with the requirements of the National Historic Preservation Act of 1966 as amended and the appropriate Code of Federal Regulations as now constituted.

**R455-9-3. Applicable Federal Regulations.**

The committee shall comply with appropriate federal laws including 16 USC 470 the National Historic Preservation Act of 1966 as amended and the appropriate Code of Federal Regulations including 36 CFR 61.4 and 36 CFR 60 which are herein incorporated by reference.

**R455-9-4. Policy Exceptions.**

The National Park Service as the responsible federal agency for regulation regarding the committee may authorize exceptions consistent with their requirements regarding regulations relating to functions of the committee described in 36 CFR 61.4 and 36 CFR 60 as amended July 1, 1996.

**KEY: historic preservation, cultural sites**

1992

9-8-205(1)

Notice of Continuation February 2, 2016

9-8-205(d)

16 USC 470

**R512. Human Services, Child and Family Services.****R512-60. Children's Account.****R512-60-1. Purpose, Authority, Definitions, and Scope.**

(1) Purpose. The purpose of this rule is to specify the requirements for carrying out the purposes of the Children's Account, with the funding specified in Section 62A-4a-309.

(2) Authority. This rule is authorized by Section 62A-4a-102.

(3) Definitions. For the purposes of this rule:

(a) "Administrator" means the employee of Child and Family Services appointed by the Director to administer the Children's Account.

(b) "CA" is the Children's Account.

(c) "Child and Family Services" means the Division of Child and Family Services.

(d) "Conflict of Interest" is defined as a situation where a Council member's private or outside economic, social, political, or volunteer interests interfere (or have the potential to, or may appear to, interfere) with that council member's duties and responsibilities.

(e) "Council" means the Child Abuse Advisory Council established under Section 62A-4a-311.

(f) "Director" means Director of Child and Family Services.

(g) "RGA" stands for Request for Grant Application.

(4) Scope. Funds from the CA shall be used for community-based education, service, and treatment programs to prevent the occurrence and recurrence of child abuse and neglect, as specified in Section 62A-4a-305.

**R512-60-2. Functions of the Council.**

(1) The Council shall advise Child and Family Services on matters relating to abuse and neglect and recommend how funds contained in the CA should be allocated.

**R512-60-3. Conflict of Interest.**

(1) Child and Family Services shall obtain written disclosure of any potential conflicts of interest from a prospective member prior to appointment to Council membership.

(2) Council members shall provide written disclosure of any potential conflicts of interest to Child and Family Services for annual review and approval.

(3) A Council member affiliated with an individual or organization that may bid on or receive a contract shall immediately provide written disclosure of this potential conflict of interest to Child and Family Services.

(4) Child and Family Services may appoint a prospective member who may have a conflict of interest on condition that they may only participate on the Council as it advises Child and Family Services on matters relating to abuse and neglect. A Council member with a conflict of interest shall not receive any information, nor participate in any discussion, presentation, consideration, or vote regarding the Council's recommendations regarding the allocation of CA funds, including any information related to RGA or contract development or review.

(5) A Council member shall not exert influence or make any requests for favored consideration from any individual on the Council or from Child and Family Services to receive a contract award. Council members participating in the development of fund allocation recommendations or RGA shall keep confidential any information prior to official public release by Child and Family Services.

**R512-60-4. Responsibilities of the Director.**

(1) In addition to the responsibilities defined in Section 62A-4a-303, the Director shall:

(a) Designate a staff member to serve as the Administrator of the CA and as the liaison with the Council.

(b) Review policies and procedures regarding the administration of the CA which have been developed by the Council.

(c) Hold a public hearing for comments on the CA allocation plan and prevention priorities. This shall meet the requirement of Section 62A-4a-306 requiring public comments on the specific program or service.

(d) Approve the allocation plan and prevention priorities prior to implementation.

(e) Approve policies of the CA.

**R512-60-5. Proposal Requirements.**

(1) A RGA shall be developed by Child and Family Services based upon the approved allocation plan and prevention priorities, and in accordance with State Purchasing Guidelines. RGA shall specify the purposes and eligibility requirements for projects or programs to be funded through the CA. The proposal requirements may vary from year to year.

(2) Child and Family Services shall widely disseminate RGA. Project or program proposals shall be submitted as specified in the RGA.

**R512-60-6. Funding Limitations and Requirements.**

(1) Funding for individual projects shall be recommended by the Council and approved by Child and Family Services based on availability of funds and identified prevention priorities, with consideration for programs or projects that serve the largest portion of the population, serve segments of the population at highest risk for abuse and neglect, or are of exceptional merit as evidence-based or evidence-informed in prevention of abuse or neglect.

(a) Contracts may be renewed according to the terms of the procurement.

(2) Each program or project funded through the CA shall provide a dollar-for-dollar match from private or local government sources.

(a) In-kind contributions may be used as part of the local match requirement. No more than 50% of the local match requirement may be in-kind. The entity that receives the statewide evaluation contract is excepted from the cash-match provisions contained in Section 62A-4a-309. Upon recommendation of the executive director and the Council, Child and Family Services may reduce or waive the match requirements for an entity, if Child and Family Services determines that imposing the requirements would prohibit or limit the provisions of services needed in a particular geographic area (Section 62A-4a-309).

(b) Items that may be used as in-kind match are contributed services of support personnel, office space, furniture and equipment, utility costs, vehicles, contributed services of professional personnel including physicians, nurses, social workers, psychologists, educators, public accountants, and lawyers who are performing services for which they would normally be paid. The source of original funding for this in-kind match shall not be state or federal monies.

**R512-60-7. Procedures in Selecting Programs or Projects to be Supported by the Children's Account.**

(1) Proposals received by Child and Family Services in response to the RGA shall be reviewed according to the criteria specified in the RGA, consistent with Section 62A-4a-307.

(2) The Administrator or other Child and Family Services designees shall negotiate contracts with successful offerors based on State Purchasing Guidelines.

**R512-60-8. Evaluation.**

(1) Each program or project funded through the CA shall be evaluated at least once each year to determine if the purposes and goals of the project have been met. This evaluation may be

done by personnel within Child and Family Services or by contract with a qualified individual, non-profit organization, or agency. A copy of the written evaluation shall be provided to Child and Family Services, who will provide evaluation information to the Council.

**R512-60-9. Research.**

(1) CA funds may be used for research programs consistent with Section 62A-4a-305 at funding levels the Council deems appropriate. Basic or applied research programs or projects that provide empirical data to support efforts to prevent the occurrence or recurrence of child abuse and neglect in any of its basic forms, including physical abuse, neglect or abandonment, sexual maltreatment, psychological abuse, or educational or medical neglect, may be funded.

**KEY: child welfare, child abuse, children's account**

June 7, 2012	62A-4a-102
Notice of Continuation February 8, 2016	62A-4a-305
	62A-4a-309
	62A-4a-310
	62A-4a-311

**R590. Insurance, Administration.****R590-144. Commercial Aviation Insurance Exemption From Rate and Form Filing.****R590-144-1. Authority.**

This Rule is promulgated by the insurance commissioner pursuant to:

(a) Section 31A-2-201, which provides general authority to adopt rules for the implementation of the Utah Insurance Code;

(b) Section 31A-19a-103, which authorizes the commissioner to exempt any market segment from provisions of Chapter 19a, Rate Regulation; and

(c) Subsection 31A-21-101(5), which authorizes the commissioner to exempt any class of insurance contract or class of insurer from provisions of Chapter 21, Insurance Contracts in General.

**R590-144-2. Purpose.**

The purpose of this rule is to exempt commercial aviation insurance, as defined in this rule, from the rate filing requirements of Chapter 19a and the form filing requirements of Chapter 21.

Because of the unique nature of commercial aviation risks, aviation insurance premiums rely on individual risk analysis, underwriting judgment and the negotiation of a sophisticated business transaction between the insurer and an informed insured. Similarly, because of their unique nature, commercial aviation insurance risks have individually tailored manuscript-type policies.

As the commercial aviation market segment is highly specialized, competitive and global in nature, the commissioner has determined that exemption from the rate and form filing requirements of the Utah Insurance Code will not harm Utah insureds, creditors, or the public and is not necessary to the regulation of these insurance products.

**R590-144-3. Scope.**

This rule applies to all insurers licensed to write commercial aviation insurance as it is defined in this rule. This rule also applies to all rate service organizations.

**R590-144-4. Definitions.**

For the purpose of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, Section 31A-19a-102, and in addition thereto, the following:

(1) "Aviation insurance" means:

(a) All kinds and classes of property insurance on aircraft and all kinds of property and interests with respect to, appertaining to or in connection with any and all risks or perils of aerial navigation, transit or transportation.

(b) All kinds and classes of casualty insurance in connection with the construction, repair, maintenance, operation or use of aircraft, and all kinds and classes of casualty insurance in connection with the maintenance, operation or use of airports, including public liability and property damage.

(2) "Commercial aviation insurance" means any class of aviation insurance except insurance of aircraft used for private business and pleasure.

(3) "Private business and pleasure" means predominant use of aircraft for pleasure or personal transportation purposes. The incidental use of aircraft in furtherance of an occupational or business interest is permissible.

**R590-144-5. Rule.**

(1) Insurers and rate service organizations are exempt from the rate filing requirements of Section 31A-19a-203, for commercial aviation insurance. This rule does not exempt such insurers from the rate standards of 31A-19a-201.

(2) Insurers and rate service organizations are exempt from

the form filing requirements of Section 31A-21-201, for commercial aviation insurance. This rule does not permit such insurers to issue contracts that do not conform to the general provisions of Chapter 21.

(3) All insurers must maintain fully documented underwriting files which must be made available to the commissioner upon request. The underwriting file must show that rates are not excessive, inadequate or unfairly discriminatory. The file must also show that contracts are not inequitable, unfairly discriminatory, misleading, deceptive, obscure, encourage misrepresentation, or are otherwise in violation of Utah law.

**R590-144-6. Severability.**

If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the Rule and the application of any provisions to other persons or circumstances shall not be affected.

**KEY: insurance****1991****Notice of Continuation February 29, 2016****31A-2-201****31A-19a-103****31A-21-101**

**R590. Insurance, Administration.****R590-164. Uniform Health Billing Rule.****R590-164-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to Subsection 31A-22-614.5 which authorizes the commissioner to adopt uniform claim forms, billing codes, and compatible systems of electronic billing.

**R590-164-2. Purpose.**

The purpose of this rule is to designate uniform claim forms, billing codes and compatible electronic data interchange standards for use by health payers and providers.

**R590-164-3. Applicability and Scope.**

(1) This rule applies to health claims, health encounters, and electronic data interchange between payers and providers.

(2) Except as otherwise specifically provided, the requirements of this rule apply to payers and providers.

(3) This rule does not prohibit a payer from requesting additional information required to determine eligibility of the claim under the terms of the policy or certificate issued to the claimant.

(4) This rule does not prohibit a payer or provider from using alternative forms or procedures specified in a written contract between the payer and provider.

(5) This rule does not exempt a payer or provider from data reporting requirements under state or federal law or regulation.

**R590-164-4. Definitions.**

As used in this rule:

(1) Uniform Claim Forms are defined as:

(a) "UB-04" means the health insurance claim form maintained by NUBC for use by institutional care providers.

(b) "Form CMS 1500" means the health insurance claim form maintained by NUCC for use by health care providers.

(c) "J400" means the uniform dental claim form approved by the American Dental Association for use by dentists.

(d) "NCPDP" means the National Council for Prescription Drug Program's Claim Form or its electronic counterpart.

(2) Uniform Claim Codes are defined as:

(a) "ASA Codes" means the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.

(b) "CDT Codes" means the current dental terminology prescribed by the American Dental Association.

(c) "CPT Codes" means the current physicians procedural terminology, published by the American Medical Association.

(d) "DRG Codes" means Diagnosis Related Group codes. DRG's are universal grouping that are used to clarify the type of inpatient care received. The DRG code, along with a diagnosis code and the length of the inpatient stay, are used to determine payment and reimbursement for claims.

(e) "HCPCS" means HCFA's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's (AMA's) Physician Current Procedural Terminology, codes, alphanumeric codes, and related modifiers. This includes:

(i) "HCPCS Level 1 Codes" which are the AMA's CPT codes and modifiers for professional services and procedures.

(ii) "HCPCS Level 2 Codes" which are national alphanumeric codes and modifiers for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT codes.

(f) "ICDCM Codes" means the diagnosis and procedure codes in the International Classification of Diseases, clinical modifications published by the U.S. Department of Health and

Human Services.

(g) "NDC" means the National Drug Codes of the Food and Drug Administration.

(h) "UB04 Rate Codes" means the code structure and instructions established for use by the National Uniform Billing Committee.

(3) "Electronic Data Interchange Standard" means the:

(a) ASC X12N standard format developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides as modified by the Utah Health Information Network (UHIN) Standards Committee;

(b) other standards developed by the UHIN Standards Committee at the request of the commissioner; and

(c) as adopted by the commissioner by rule.

(4) "HPID" means Health Plan Identifier. HPID is the national unique health plan identifier assigned to identify individual health plans.

(5) "NPI" means National Provider Identifier. A NPI is a unique ten digit identification number required by HIPAA for all health care providers in the United States. Providers must use their NPI to identify themselves in all HIPAA transactions.

(6) "Payer" means an insurer or third party administrator that pays for, or reimburses for the costs of health care expense.

(7) "Provider" means any person, partnership, association, corporation or other facility or institution that renders or causes to be rendered health care or professional services, and officers, employees or agents of any of the above acting in the course and scope of their employment.

(8) "UHIN Standards Committee" means the Standards Committee of the Utah Health Information Network.

(9) "CMS" means the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. CMS replaced HCFA.

(10) "HIPAA" means the federal Health Insurance Portability and Accountability Act.

(11) "NUBC" means the National Uniform Billing Committee.

(12) "NUCC" means the National Uniform Claim Committee.

**R590-164-5. Paper Claim Transactions.**

Payers shall accept and may require the applicable uniform claim forms completed with the uniform claim codes.

**R590-164-6. Electronic Data Interchange Transactions.**

(1) The commissioner shall use the UHIN Standards Committee to develop electronic data interchange standards for use by payers and providers transacting health insurance business electronically. In developing standards for the commissioner, the UHIN Standards Committee shall consult with national standard setting entities including but not limited to Centers for Medicare and Medicaid Services (CMS), the National Uniform Claim Form Committee, ASC X12, NCPDP, and the National Uniform Billing Committee.

(2) Standards developed and adopted by the UHIN Standards Committee shall not be required for use by payers and providers, until adopted by the commissioner by rule.

(3) Payers shall accept the applicable electronic data if transmitted in accordance with the adopted electronic data interchange standard. Payers may reject electronic data if not transmitted in accordance with the adopted electronic data interchange standard.

(4) The following HIPAA+ electronic data interchange standards developed and adopted by the UHIN Standards Committee and adopted by the commissioner are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours or at [www.insurance.utah.gov](http://www.insurance.utah.gov).

(a) "999 Implementation Acknowledgement For Health Care Insurance v4.0." Purpose: To detail the standard transaction for the reporting of transmission receipt and transaction or functional group X12 and implementation guide error. This standard adopts the use of the ASC X12 999 transaction.

(b) "Administrative Transaction Acknowledgements Standard v4.0." Purpose: To create a process for acknowledging all electronic transactions between trading partners based on the communication, syntax semantic and business process specifications.

(c) "Anesthesia Standard v3.1." Purpose: to standardize the transmission of anesthesia data for health care services. This standard does not alter any contractual agreement between providers and payers.

(d) "Benefits and Enrollment Standard v3.1." Purpose: To detail the standard transactions for the transmission of health care benefits enrollment and maintenance.

(e) "Claim Acknowledgement Standard v3.2." Purpose: To provide a standardized claim acknowledgement in response to a claim submission. This transaction is used to report on the status of a claim/encounter at the pre-adjudication processing stage, for example, before the payer is legally required to keep a history of the claim or encounter.

(f) "Claim Status Inquiry and Response Standard v3.2." Purpose: To detail the standard transactions for the transmission of health care claim status inquiries and response after January 1, 2012. The transaction is intended to allow the provider to reduce the need for claim follow-up and facilitate the correction of claims.

(g) "CMS 1500 Paper Claim Form Box 17, 17A and 17B Standard v3.2." Purpose: To establish a standard approach to reporting referring provider name and identifier number on the claim form. This standard also provides the cross walk to the ASCX12 837 Professional Claim version 005010x222A1.

(h) "CMS 1500 Paper Claim Form Standard v3.3." Purpose: To clearly describe the standard use of each Box, for print images, and its crosswalk to the HIPAA 837 005010X222A1 Professional implementation guide.

(i) "Coordination of Benefits Standard v3.1." Purpose: To streamline the coordination of benefits process between payers and providers or payer to payers. The standard is to define the data to be exchanged for coordination of benefits and to increase effective communications.

(j) "Dental Claim Billing Standard -- J400 v3.1." Purpose: To describe the standard use of each item number, for print images, and its crosswalk to the HIPAA 837 005010X0224A1 dental implementation guide. This standard adopts the ADA dental Claim Form J400.

(k) "Dental Claim Billing Standard -- J340 v3.2" Purpose: To describe the standard use of each item number, for print images, and its crosswalk to the HIPAA 837 005010x02241A1 dental implementation guide. This standard adopts the ADA dental Claim Form J340.

(l) "Electronic Remittance Advice Standard v3.5." Purpose: To detail the standard transaction for the reporting of transmission receipt and transaction or functional group X12 and implementation guide errors. This standard adopts the use of the ASC X12 999 transaction.

(m) "Eligibility Inquiry and Response Standard v3.2." Purpose: To detail the standard transactions for the transmission of health care eligibility inquiries and responses.

(n) "Health Care Claim Encounter Standard v3.2." Purpose: To detail the standard transactions for the transmission of health care claims and encounters and associated transactions.

(o) "Health Identification Card Standard v1.2." Purpose: To standardize the patient health identification card information. This identification card addresses the human-readable appearance and machine-readable information used by the

healthcare industry to obtain eligibility.

(p) "Health Plan Identifier, HPID, and Other Entity Identifier, OEID, Standard v1.1." Purpose: The purpose of the standard is to inform providers of the HIPD and OEID and their usage within the administrative transactions.

(q) "Home Health Standard v3.0." Purpose: To provide a uniform standard of billing for home health care claims and encounters.

(r) ICD-10 Standard v1.2. Purpose: To create the business requirement for payers and providers to implement the International Classification of Diseases 10th Revisions, ICD-10, within the administrative transaction.

(s) "Individual Name Standard v2.0." Purpose: To provide guidance for entering names into provider, payer or sponsor systems for patients, enrollees, as well as all other people associated with these records.

(t) "Medicaid Enrollment Implementation Guide v3.0." Purpose: This standard establishes the use of the ASC X12 834 enrollment transaction for Medicaid enrollments.

(u) "Metabolic Dietary Products Standard v3.0." Purpose: To provide a uniform standard for billing of metabolic dietary products for those providers and payers using the UB04, the CMS 1500, the NCPDP, or an electronic equivalent.

(v) "National Provider Identifier Standard v3.0." Purpose: To inform providers of the national provider identifier requirements and the usage within the transactions.

(w) "Pain Management Standard v3.1." Purpose: To provide a uniform method of submitting pain management claims, encounters, pre-authorizations, and notifications.

(x) "Patient Identification Number Standard v3.0." Purpose: To describe the standard for the patient identification number.

(y) "Premium Payment Standard v3.0." Purpose: To detail the standard transactions for the transmission of premium payments.

(z) "Prior Authorization/Referral Standard v3.0." Purpose: To provide general recommendations to payers and providers about handling electronic prior authorization and referrals.

(aa) "Required Unknown Values Standard v3.0." Purpose: To provide guidance for the use of common data values that can be used within the HIPAA transactions when a required data element is not known by the provider, payer or sponsor for patients, enrollees, as well as all other people associated with these transactions. These data values should only be used when the data is truly not available or known. These values should not be used to replace known data.

(ab) "Telehealth Standard v3.1." Purpose: To provide a uniform standard of billing for health care claims and encounters delivered via telehealth.

(ac) "Transparency Administration Performance Standard v1.2," Purpose: To establish performance measures that report the average telephone answer time and claim turnaround time.

(ad) "Transparency Denial Standard v1.2." Purpose: To establish performance measures that report the number and cost of an insurer's denied health claims and to provide guidance pertaining to the reporting method and timeline.

(ae) "UB04 Form Locator Elements Standard v3.0." Purpose: To clearly describe the use of each form locator in the UB04 claim billing form and its crosswalk to the HIPAA 837 005010X223A2 institutional implementation guide.

#### **R590-164-7. Separability.**

If any provision of this rule or the application 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.

Notice of Continuation March 10, 2015



**R590. Insurance, Administration.****R590-177. Life Insurance Illustrations Rule.****R590-177-1. Authority.**

This rule is issued based upon the authority granted the commissioner under:

- A. Subsection 31A-2-201(3)(a) to implement the provisions of Title 31A;
- B. Subsection 31A-22-425(1)(c) to establish standards for illustrations; and
- C. Subsection 31A-23a-402(8) to define unfair methods of competition and unfair or deceptive acts or practices in the business of insurance.

**R590-177-2. Purpose.**

The purpose of this rule is to provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. The rule provides illustration formats, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations. The goals of this rule are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

**R590-177-3. Applicability and Scope.**

A. This rule applies to all group and individual life insurance policies and certificates except:

- (1) variable life insurance;
- (2) individual and group annuity contracts;
- (3) credit life insurance; or
- (4) life insurance policies with no illustrated death benefits on any individual exceeding \$10,000.

B. The provisions of this rule apply to policies sold on or after January 1, 1997.

**R590-177-4. Definitions.**

In addition to definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

B. "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

C. "Currently payable scale" means a scale of non-guaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next 95 days.

D. "Disciplined current scale" means a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

- (1) are consistent with all provisions of this rule;
- (2) limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;
- (3) do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and
- (4) do not permit assumed expenses to be less than minimum assumed expenses.

E. "Generic name" means a short title descriptive of the policy being illustrated such as "whole life," "term life" or "flexible premium adjustable life."

F. "Guaranteed elements" and "non-guaranteed elements"

(1) "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

(2) "Non-guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

G. "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

- (1) the disciplined current scale; or
- (2) the currently payable scale.

H. "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

(1) "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and non-guaranteed elements.

(2) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this rule, and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

(3) "In force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

I. "Illustration actuary" means an actuary meeting the requirements of Section 11 who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.

J. "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in this rule, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100% policy persistency thereafter.

K.(1) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

- (a) fully allocated expenses;
- (b) marginal expenses; and
- (c) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the commissioner.

(2) Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

L. "Non-term group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

- (1) every plan of coverage was selected by the employer or other group representative;
- (2) some portion of the premium is paid by the group or through payroll deduction; and
- (3) group underwriting or simplified underwriting is used.

M. "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

N. "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

O. "Self-supporting illustration" means an illustration of

a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies, or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.

**R590-177-5. Policies to Be Illustrated.**

A. Each insurer marketing policies to which this rule is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on January 1, 1997, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after January 1, 1997, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

B. If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

C. If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this rule is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

D. Potential enrollees of non-term group life subject to this rule shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this rule, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.

**R590-177-6. General Rules and Prohibitions.**

A. An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this rule, be clearly labeled "life insurance illustration" and contain the following basic information:

- (1) name and address of insurer;
- (2) name and business address of producer or insurer's authorized representative, if any;
- (3) name, age and sex of proposed insured, except where a composite illustration is permitted under this rule;
- (4) underwriting or rating classification upon which the illustration is based;
- (5) generic name of policy, the company product name, if different, and form number;
- (6) initial death benefit; and
- (7) dividend option election or application of non-guaranteed elements, if applicable.

B. When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized

representatives shall not:

- (1) represent the policy as anything other than a life insurance policy;
  - (2) use or describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
  - (3) state or imply that the payment or amount of non-guaranteed elements is guaranteed;
  - (4) use an illustration that does not comply with the requirements of this rule;
  - (5) use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
  - (6) provide an applicant with an incomplete illustration;
  - (7) represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
  - (8) use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;
  - (9) except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
  - (10) use an illustration that is not "self-supporting."
- C. If an interest rate used to determine the illustrated non-guaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

**R590-177-7. Standards for Basic Illustrations.**

A. Format. A basic illustration shall conform with the following requirements:

- (1) The illustration shall be labeled with the date on which it was prepared.
- (2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration, e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages".
- (3) The assumed dates of payment receipt and benefit payout within a policy year shall be clearly identified.
- (4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.
- (5) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.
- (6) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.
- (7) If the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed.
- (8) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements, e.g., "see page one for guaranteed elements."
- (9) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.
- (10) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.
- (11) Illustrations may show policy benefits and values in

graphic or chart form in addition to the tabular form.

(12) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

- (a) the benefits and values are not guaranteed;
- (b) the assumptions on which they are based are subject to change by the insurer; and
- (c) actual results may be more or less favorable.

(13) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(14) If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(15) The illustration shall be complete, not misleading, and the narrative summary, numeric summary, and tabular detail shall be consistent.

**B. Narrative Summary.** A basic illustration shall include the following:

(1) a brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(2) a brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

(3) a brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(4) identification and a brief definition of column headings and key terms used in the illustration; and

(5) a statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

**C. Numeric Summary.**

(1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show at least policy years 5, 10, 20 and 30 on the three bases shown below.

- (a) Policy guarantees;
- (b) Insurer's illustrated scale;
- (c) Insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:

(i) dividends at 50% of the dividends contained in the illustrated scale used;

(ii) non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(iii) all non-guaranteed charges, including term insurance charges, and mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(2) In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases.

**D. Statements.** Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this rule.

(1) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The producer has told me they are not guaranteed."

(2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

**E. Tabular Detail.**

(1) A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(a) the premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(b) the corresponding guaranteed death benefit, as provided in the policy; and

(c) the corresponding guaranteed value available upon surrender, as provided in the policy.

(2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(3) Non-guaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

#### **R590-177-8. Standards for Supplemental Illustrations.**

**A.** A supplemental illustration may be provided so long as:

(1) it is appended to, accompanied by or preceded by a basic illustration that complies with this rule;

(2) the non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

(3) it contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed; and

(4) for a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

**B.** The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

**R590-177-9. Delivery of Illustration and Record Retention.**

A.(1) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this rule, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.

(2) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this rule, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

B.(1) If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form, the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(2) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

C. If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

D. A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

**R590-177-10. Annual Report; Notice to Policy Owners.**

A. In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

(1) for universal life policies, the report shall include the following:

(a) the beginning and end date of the current report period;

(b) the policy value at the end of the previous report period and at the end of the current report period;

(c) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type e.g., interest, mortality, expense and riders;

(d) the current death benefit at the end of the current report period on each life covered by the policy;

(e) the net cash surrender value of the policy as of the end of the current report period;

(f) the amount of outstanding loans, if any, as of the end of the current report period; and

(g) for fixed premium policies: if, assuming guaranteed

interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(h) for flexible premium policies: if assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(2) For all other policies, where applicable:

(a) current death benefit;

(b) annual contract premium;

(c) current cash surrender value;

(d) current dividend;

(e) application of current dividend; and

(f) amount of outstanding loan.

(3) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

B. If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently:

"IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer's phone number), writing to (insurer's name) at (insurer's address) or contacting your producer. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department."

The insurer may vary the sequential order of the methods for obtaining an in force illustration.

C. Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of Section 6A, 6B, 7A and 7E. No signature or other acknowledgment of receipt of this illustration shall be required.

D. If an adverse change in non-guaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

**R590-177-11. Annual Certifications.**

A. The board of directors of each insurer shall appoint one or more illustration actuaries.

B. The illustration actuary shall certify that:

(1) the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice No. 24, Compliance with the NAIC Life Insurance Illustrations Model Regulation promulgated by the Actuarial Standards Board; and

(2) the illustrated scales used in insurer-authorized illustrations meet the requirements of this rule.

C. The illustration actuary shall:

(1) be a member in good standing of the American Academy of Actuaries;

(2) be familiar with the standard of practice regarding life insurance policy illustrations;

(3) not have been found by the commissioner, following appropriate notice and hearing, to have:

(a) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of dealings as

an illustration actuary;

(b) been found guilty of fraudulent or dishonest practices;  
 (c) demonstrated incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(d) resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(4) not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under Subsection (3) above;

(5) disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this shall be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in force policies are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms, this shall be disclosed in the annual certification; and

(6) disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(a) fully allocated expenses;  
 (b) marginal expenses; or  
 (c) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the commissioner.

D.(1) The illustration actuary shall file a certification with the board:

(a) annually for all policy forms for which illustrations are used; and

(b) before a policy form is illustrated.

(2) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

E. If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of the inability to certify.

F. A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(1) that the illustration formats meet the requirements of this rule and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(2) that the company has provided its producers with information about the expense allocation method used by the company in its illustrations and disclosed as required in Subsection C(6) of this section.

G. The annual certifications shall be completed each year by a date determined by the insurer. The certifications shall be maintained by the insurer for a period of 5 years and be available for inspection by the commissioner.

H. If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner and disclose the reason for the change.

**R590-177-12. Penalties.**

An insurer or producer that violates this rule is subject to the penalties provided for in Sections 31A-23a-111, 31A-23a-112, and 31A-2-308 in addition to any other penalties provided by the laws of the state.

**R590-177-13. Severability.**

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the rule and its application to other persons or circumstances may not be affected.

**R590-177-14. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date of the revised rule.

**KEY: insurance  
 November 24, 2009**

**31A-23-302**

**Notice of Continuation February 29, 2016**

**R590. Insurance, Administration.****R590-200. Diabetes Treatment and Management.****R590-200-1. 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 diabetes is provided in Section 31A-22-626.

**R590-200-2. Purpose.**

The purpose of this rule is to establish minimum standards of coverage for diabetes. Diabetes includes individuals with:

- (1) complete insulin deficiency or type 1 diabetes;
- (2) insulin resistance with partial insulin deficiency or type 2 diabetes; and
- (3) elevated blood glucose levels induced by pregnancy or gestational diabetes.

This coverage will be provided at the levels consistent with the coverage provided for the treatment of other illnesses or diseases.

**R590-200-3. Applicability and Scope.**

(1) This rule applies to all health care insurance policies sold in Utah.

(2) This rule does not prohibit an insurer from requesting additional information required to determine eligibility of a claim under the terms of the policy, certificate or both, as issued to the claimant.

**R590-200-4. Definitions.**

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition, the following:

(1) "Health care insurance" means insurance providing health care benefits or payment of health care expenses incurred, including prescription insurance. Health care insurance does not include accident and health insurance providing benefits for:

- (a) dental and vision;
- (b) replacement of income;
- (c) short term accident;
- (d) fixed indemnity;
- (e) credit accident and health;
- (f) supplements to liability;
- (g) workers compensation;
- (h) automobile medical payments;
- (i) no fault automobile;
- (j) Medicare supplement insurance plans;
- (k) equivalent self-insurance;
- (l) any type of accident and health insurance that is a part of or attached to another type of policy; or
- (m) long term care insurance.

(2) "Diabetes" means diabetes mellitus, which is a common chronic, serious systemic disorder of energy metabolism that includes a heterogeneous group of metabolic disorders that can be characterized by an elevated blood glucose level. The terms diabetes and diabetes mellitus are considered synonymous and defined to include persons using insulin, persons not using insulin, individuals with elevated blood glucose levels induced by pregnancy, or persons with other medical conditions or medical therapies which wholly or partially consist of elevated blood glucose levels.

(3) "Diabetes self-management training" means a program designed to help individuals to learn to manage their diabetes in an outpatient setting. They learn self-management skills that include making lifestyle changes to effectively manage their diabetes and to avoid or delay the complication, hospitalizations and emergency room visits associated with this illness. This training includes medical nutrition therapy.

(4) "Medical equipment" means non-disposable/durable equipment used to treat diabetes and will be treated per the standard deductibles, copayments, out of pocket maximums and coinsurance of the policy.

(5) "Medical nutrition therapy" means the assessment of patient nutritional status followed by therapy including diet modification, planning and counseling services which are furnished by a registered licensed dietitian.

(6) "Medical supplies" means the generally accepted single-use items used to manage, monitor, and treat diabetes, and to administer diabetes specific medications. Medical supplies will be treated per the standard deductibles, copayments, out of pocket maximums and coinsurance of the policy.

**R590-200-5. Minimum Standards and General Provisions.**

(1) Coverage for the treatment of diabetes is subject to the deductibles, copayments, out-of-pocket maximums and coinsurance of the plan.

(2)(a) All health care insurance policies will cover diabetes self-management training and patient management, including medical nutrition therapy, when deemed medically necessary and prescribed by an attending physician covered by the plan.

(b) The diabetes self-management training services must be provided by a diabetes self-management training program that is accepted by the plan and is:

- (i) recognized by the federal Health Care Financing Administration; or
- (ii) certified by the Department of Health; or
- (iii) approved or accredited by a national organization certifying standards of quality in the provision of diabetes self-management education.

(c) Diabetes self-management training programs shall be provided upon a health care insurance policyholder's/dependent's diagnosis with diabetes, upon a significant change in a health care insurance policyholder's/dependent's diabetes related condition, upon a change in a health care insurance policyholder's/dependent's diagnostic levels, or upon a change in treatment regimen when deemed medically necessary and prescribed by an attending physician covered by the plan. The plan must provide no less than the minimum standards required by the selected self-management training services provider program.

(3) All health care policies will cover the following when deemed medically necessary:

(a) blood glucose monitors, including commercially available blood glucose monitors designed for patients use and for persons who have been diagnosed with diabetes;

(b) blood glucose monitors to the legally blind which includes commercially available blood glucose monitors designed for patient use with adaptive devices and for persons who are legally blind and have been diagnosed with diabetes;

(c) test strips for glucose monitors, which include test strips whose performance achieved clearance by the FDA for marketing;

(d) visual reading and urine testing strips, which includes visual reading strips for glucose, urine testing strips for ketones, or urine test strips for both glucose and ketones. Using urine test strips for glucose only is not acceptable as the sole method of monitoring blood sugar levels;

(e) lancet devices and lancets for monitoring glycemic control;

(f) insulin, which includes commercially available insulin preparations including insulin analog preparations available in either vial or cartridge;

(g) injection aids, including those adaptable to meet the needs of the legally blind, to assist with insulin injection;

(h) syringes, which includes insulin syringes, pen-like insulin injection devices, pen needles for pen-like insulin

injection devices and other disposable parts required for insulin injection aids;

(i) insulin pumps, which includes insulin infusion pumps.

(j) "medical supplies" for use with insulin pumps and insulin infusion pumps to include infusion sets, cartridges, syringes, skin preparation, batteries and other disposable supplies needed to maintain insulin pump therapy;

(k) "medical supplies" for use with or without insulin pumps and insulin infusion pumps to include durable and disposable devices to assist with the injection of insulin and infusion sets;

(l) prescription oral agents of each class approved by the FDA for treatment of diabetes, and a variety of drugs, when available, within each class; and

(m) glucagon kits.

**R590-200-6. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity shall not affect any other provisions 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**

**April 30, 2001**

**Notice of Continuation February 29, 2016**

**31A-2-201**

**31A-22-626**

**R628. Money Management Council, Administration.**  
**R628-12. Certification of Qualified Depositories for Public Funds.**

**R628-12-1. Authority.**

This rule is issued pursuant to Sections 51-7-3(21) and 51-7-18(2)(b).

**R628-12-2. Scope.**

This rule applies to all federally insured depository institutions with offices and branches in the state of Utah at which deposits are accepted or held.

**R628-12-3. Purpose.**

This rule establishes the requirements which must be met by a federally insured depository institution to become and remain a qualified depository eligible to receive and hold deposits of public funds. It also establishes the conditions under which eligibility may be terminated and the procedures to be followed in terminating a depository institution's status as a qualified depository.

**R628-12-4. General Rule.**

A Utah depository institution as defined in Subsection 7-1-103(36) or a out-of-state depository institution as defined in Subsection 7-1-103 (25), which may conduct business in this state under Section 7-1-702, whose deposits are insured by an agency of the federal government, may be certified as a qualified depository eligible to receive public funds on deposit if it meets all of the following criteria.

A. Before April 1 of each year, pay to the Department of Financial Institutions an annual certification fee as described in section 51-7-18.1(8);

B. Within 30 days of the close of each calendar quarter, submit a report of condition in the form prescribed by the Commissioner of Financial Institutions. The Commissioner may require any additional reports as may be considered necessary to determine the character and condition of the institution's assets, deposits and other liabilities, and its capital and to ensure compliance with the Money Management Act, the rules of the Money Management Council, and any order issued pursuant to an action of the Council. All reports shall be verified by oath or affirmation of the president or a authorized vice president of the institution. Any officer who knowingly makes or causes to be made any false statement or report to the Commissioner or any false entry in the books or accounts of the institution is guilty of a class A misdemeanor, as authorized in Section 51-7-18.1(3)(d).

C. Within 10 business days of the end of each month, file a report with the Commissioner of Financial Institutions of the amount of public funds held on the form prescribed by this rule. The Commissioner may require more frequent reporting if determined that it is necessary to protect public treasurers and to ensure compliance with the Money Management Act, the rules of the Money Management Council or any order issued pursuant to an action of the Council. All reports shall be verified by the oath or affirmation of the president or a authorized vice president of the institution. Any officer who knowingly makes or causes to be made any false statement or report to the Commissioner or any false entry in the books or accounts of the institution is guilty of a class A misdemeanor, as authorized by 51-7-18.(3)(d).

D. Have and maintain a positive amount of capital as defined in R628-11-4-B.

**R628-12-5. Notification of Certification.**

Not less than quarterly, the Money Management Council shall prepare or cause to be prepared a list of all qualified depositories and the maximum amount of public funds that each is eligible to hold under R628-11. This list shall be distributed

to each public treasurer via US Postal Service or electronic means. Additions and deletions shall be made on the list for the next successive quarter.

**R628-12-6. Examination of Qualified Depositories.**

The Commissioner shall have the right to examine the books and records of any qualified depository if the Commissioner determines that examination is necessary to ascertain the character and condition of its assets, its deposits and other liabilities, and its capital and to ensure compliance with the Money Management Act, the rules of the Money Management Council, and any order issued pursuant to an action of the Council.

**R628-12-7. Grounds for Termination of Status as a Qualified Depository.**

Any of the following events constitutes grounds for termination of a depository institution's status as a qualified depository and immediate relinquishment of all public funds deposits:

A. Termination of the institution's federal deposit insurance.

B. Failure to pay the annual certification fee.

C. Failure to file the required financial reports.

D. Failure to maintain a positive amount of capital as defined in R628-11-4-B.

E. Making any false statement or filing any false report with the Commissioner.

F. Accepting, receiving or renewing deposits of public funds in excess of the maximum amount of public funds allowed.

G. Failure to comply with a written order issued by the Commissioner pursuant to Section 51-7-18.1(7) within 15 days of receipt of the order.

H. Request by a depository institution to be removed from the list of qualified depositories.

**R628-12-8. Procedures for Termination and Reinstatement of Status as a Qualified Depository.**

A. If the Money Management Council determines that the grounds for termination of a depository institution's status as a qualified depository exist, upon the vote of at least three members of the Money Management Council, a depository institution may be terminated as a qualified depository. Termination will be effective upon service of notice to the institution of the Council's action. Notice of termination will state the grounds upon which the Council acted and the remedies required to cure the violation.

B. After the date of service of notice of termination as a qualified depository, the institution shall not accept, receive or renew any deposits of public funds until specifically authorized in writing by the Commissioner and all existing accounts shall be transferred to a qualified depository.

C. An institution may be reinstated as a qualified depository upon the written authorization of the Commissioner, if it has corrected the violation which constituted grounds for termination.

**KEY: public investments, banking law, financial institutions 1990**

**51-7-3(21)**

**Notice of Continuation February 26, 2016**

**51-7-18(2)(b)**

**7-1-102, 103(36)**



**R628. Money Management Council, Administration.****R628-13. Collateralization of Public Funds.****R628-13-1. Authority.**

This rule is issued pursuant to Sections 51-7-18.1(5).

**R628-13-2. Scope.**

This rule applies to all qualified depositories required to pledge collateral security for public funds.

**R628-13-3. Purpose.**

The purpose of this rule is to establish the requirements for pledging of collateral security to insure that public treasurers have a perfected security interest in the collateral security pledged, to define the conditions under which the Council may require the pledging of collateral security in lieu of relinquishment of deposits in excess of the maximum amount a qualified depository may hold under the Money Management Act and the rules of the Council, and to impose restrictions on a qualified depository which is required to pledge collateral security for the public deposits which it holds.

**R628-13-4. Definitions.**

A. Deposits means balances due to persons having an account at the qualified depository institution whether in the form of a transaction account, savings account, share account, or certificate of deposit and repurchase agreements, unless the repurchase agreement contract and confirmation fully meet the FDIC criteria as described in 12 CFR Part 360. Qualifying repurchase agreements as defined in Section 51-7-3 are not deposits of a qualified depository institution.

B. Designated trustee means the trustee selected to serve as the agent of the State Treasurer to hold and administer collateral security pledged for public funds.

C. Eligible collateral means obligations of or fully guaranteed by the United States or its agencies as to principal and interest, a segregated earmarked deposit account, or notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a federal reserve bank, obligations of the State of Utah or any of its political subdivisions, and readily marketable bonds, notes or debentures.

D. Excess deposit means that portion of the public funds held on deposit with a qualified depository by public treasurers which exceeds the most recently adopted maximum amount of public funds allowed pursuant to the Money Management Act and the rules of the Money Management Council as of the effective date of an order issued by the Commissioner of Financial Institutions pursuant to Section 51-7-18.1(6).

E. Market value means the bid or closing price listed for financial instruments in a regularly published listing or an electronic reporting service or, in the case of obligations which are not regularly traded, the bid price received from at least one registered securities broker/dealer.

F. Readily marketable bonds, notes or debentures means obligations in the form of a bond, note, or debenture rated in one of the three highest ratings of a nationally recognized rating agency; it does not include investments which are predominantly speculative in nature.

**R628-13-5. General Rule.**

A. Conditions Under Which Collateral Will Be Allowed

(1) The Money Management Council may vote to allow collateral security to be pledged to secure excess deposits when a qualified depository has accepted and holds public funds in excess of its public funds allotment.

(2) If the public funds allotment is reduced to one times capital, the Money Management Council may vote to allow collateral security to be pledged to secure excess deposits. The qualified depository will not be precluded or prohibited from accepting, renewing or maintaining deposits of public funds if

the total amount of deposits from each public treasurer does not exceed the applicable federal deposit insurance limit.

(3) If the public funds allotment is reduced to zero, the qualified depository will be required to pledge sufficient eligible collateral with the state treasurer's designated trustee for all uninsured deposits. The qualified depository is not precluded or prohibited from accepting, renewing or maintaining deposits of public funds when the total amount of all deposits from each public treasurer does not exceed the applicable federal deposit insurance limit.

After the effective date of any order requiring the pledging of collateral, the qualified depository may not accept, receive or renew uninsured deposits of public funds.

(4) If the amount of capital as defined in R628-11-4-A. is zero or less, the institution is no longer a qualified depository and must relinquish all deposits of public funds within 15 days of the effective date of any order issued by the Commissioner of Financial Institutions requiring relinquishment.

(5) The requirements for pledging of collateral set forth in this rule shall remain in effect until the public funds allotment has been increased to the statutory maximum or 12 months, whichever occurs first. If at the end of the 12 month period the qualified depository institution's public funds allotment has not been increased to the statutory maximum, the qualified depository shall immediately relinquish all excess deposits.

**B. Delivery of Collateral**

Within 15 days of the effective date of an order requiring collateralization of excess deposits in accordance with the provisions of this rule, a qualified depository shall deliver to the state treasurer or the designated trustee eligible collateral sufficient to meet the statutory collateralization requirements and shall execute a pledge agreement and trust indenture as required by the state treasurer. Collateral delivered to the state treasurer or the designated trustee may not be released until the state treasurer has received written confirmation from the Commissioner of Financial Institutions that the excess deposits have been surrendered or that the qualified depository is eligible to accept, receive and hold public funds without collateralization.

**KEY: public investments, collateral, trustees, financial institutions**

**October 24, 2011**

**51-7-18.1(5)**

**Notice of Continuation February 26, 2016**

**R628. Money Management Council, Administration.****R628-16. Certification as a Dealer.****R628-16-1. Authority.**

This rule is issued pursuant to Sections 51-7-3(1) and 51-7-18.

**R628-16-2. Scope.**

This rule establishes the criteria applicable to all broker-dealers and agents for certification by the Director of the Securities Division of the Department of Commerce (the "Director") as eligible to conduct investment transactions under the State Money Management Act. It further establishes the application contents and procedures, and the procedures for termination and reinstatement of certification.

**R628-16-3. Purpose.**

This rule establishes a uniform standard to evaluate the financial condition and the standing of a broker-dealer to determine if investment transactions with public treasurers by broker-dealers would expose public funds to undue risk.

**R628-16-4. Definitions.**

The following terms are defined in Section 51-7-3 of the State Money Management Act, and when used in this rule, have the same meaning as in the Act:

- A. "Certified dealer";
- B. "Council";
- C. "Director"; and
- D. "Public treasurer".

The following terms are defined in Section 61-1-13 of the Utah Uniform Securities Act, and when used in this rule, have the same meaning as in that Act:

- A. "Agent".

**R628-16-5. General Rule.**

No public treasurer may conduct any investment transaction through a broker-dealer or any agent representing a broker-dealer unless that broker-dealer has been certified by the Director as eligible to conduct investment transactions with public treasurers.

**R628-16-6. Application to Become a Certified Dealer.**

A. Any broker-dealer wishing to become a certified dealer under the State Money Management Act must submit an application to the Utah Securities Division.

B. The application must include:

(1) Primary Reporting Dealers: Proof of status as a primary reporting dealer, including proof of recognition by the Federal Reserve Bank, if applicant is a primary reporting dealer.

(2) Office Address: The address of the applicant's principal office. Broker-dealers who are not primary reporting dealers must have and maintain an office and a resident principal in Utah; the application shall include the address of the Utah office and the identity of the resident principal.

(3) Broker-Dealer Registration: Proof of registration with the Division under its laws and rules, effective as of the date of the application, of the following:

- (a) the broker-dealer;
- (b) its resident principal (if one is required); and
- (c) any agents of a firm doing business in the state of Utah.

(4) Corporate Authority: A Certificate of Good Standing, obtained from the state in which the applicant is incorporated. An applicant who is a foreign corporation also must submit a copy of its Certificate of Authority to do business in Utah, obtained from the Corporations Division of the Department of Commerce (hereinafter the "Corporations Division").

(5) Financial Statements: With respect to applicants who are not primary reporting dealers, financial statements, prepared by an independent certified public accountant in accordance

with generally accepted accounting principles, indicating that the applicant has, as of its most recent fiscal year end:

(a) Net Capital: Minimum net capital, as calculated under rule 15c3-1 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (the Uniform Net Capital Rule), of at least 5% of the applicant's aggregate debt balances, as defined in the rule, and;

(b) Total Capital: Total capital as follows:

(i) of at least \$10 million or;

(ii) of at least \$25 million, calculated on a consolidated basis, with respect to an applicant which is a wholly-owned subsidiary.

(6) Government Securities Act Registration: Proof of the firm's registration under the Government Securities Act of 1986 (100 Stat 3208).

(7) Account Documents: Copies of all agreements, contracts, or other documents that the applicant requires or intends to require to be signed by the public treasurer to open or maintain an account. These documents must meet the following requirements:

(a) The Director shall not certify any applicant who requires, or proposes to require, that any dispute arising out of transactions between the applicant and the public treasurer must be submitted to arbitration. The applicant must provide copies of agreements signed or to be signed, which allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court.

(b) Any customer agreement shall provide that suit may be litigated in a Utah court, and that Utah law shall apply in settling disputes, where relevant.

(8) Knowledge of Money Management Act: A notarized statement, signed by a principal and by any agent who has any contact with a public treasurer or its account, that the agent is familiar with the authorized investments as enumerated in Section 51-7-11(3) and the rules of the Council, and with the investment objectives of the public treasurer, as set forth in Section 51-7-17(1).

(9) Fee: A non-refundable fee as described in Section 51-7-18.3(2), payable to the Division.

**R628-16-7. Certification.**

A. Initial Certification: The initial application for certification must be received on or before the last day of the month for approval at the following month's council meeting.

B. Date of Effectiveness: All certifications shall be effective upon approval by the council.

C. Expiration; Renewal: All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed. Renewal applications must be received on or before April 30 of each year.

**R628-16-8. Renewal of Application.**

A. Certified dealers wishing to keep their status as certified dealers must reapply annually, on or before April 30 of each year, for recertification to be effective July 1 of each year.

B. The renewal application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The renewal application must be accompanied by an annual renewal fee as described in Section 51-7-18.3(2).

**R628-16-9. Post Certification Requirements.**

Certified dealers are required to notify the Division of any changes to any items or information contained in the original application within 20 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

**R628-16-10. Notification of Certification.**

The Director shall provide a list of certified broker-dealers and agents to the Money Management Council at least semiannually. The Council shall mail this list to each public treasurer.

**R628-16-11. Grounds for Suspension or Termination of Status as a Certified Dealer.**

Any one of the following constitutes grounds for suspension or termination of status as a certified dealer:

A. Termination of the dealer's status as a primary reporting dealer if the dealer gained certification as a primary reporting dealer.

B. Denial, suspension or revocation of the dealer's registration under the Government Securities Act, or by the Division, or by any other state's securities agency.

C. Failure to maintain a principal office operated by a resident registered principal in this state, if applicable.

D. Failure to maintain registration with the Utah Securities Division by the firm or any of its agents having any contact with a public treasurer.

E. Failure to remain in good standing in Utah with the Corporations Division, or to maintain a certificate of authority, as applicable.

F. Failure to submit within 10 days of the due date the required financial statements, or failure to maintain the required minimum net capital and total capital.

G. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

H. The sale, offer to sell, or any solicitation of a public treasurer by an agent or by a resident principal, where applicable, who is not certified.

I. Failure to pay the annual renewal fee.

J. Making any false statement or filing any false report with the Division.

K. Failure to file amended reports as required in section R628-16-9.

L. The sale, offer to sell, or any solicitation of a public treasurer, by the certified dealer or any of its employees or agents, of any instrument or in any manner not authorized by the Money Management Act or rules of the Council.

M. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

N. Failure to maintain registration under the federal Government Securities Act.

O. Engaging in a dishonest or unethical practice in connection with any investment transaction with a public treasurer. "Dishonest or unethical practice" includes, those acts and practices enumerated in Rule R164-6-1g.

**R628-16-12. Procedures for Suspension or Termination and Reinstatement of Status.**

A. Where it appears to the Division or to the Council that grounds may exist to suspend a certified dealer or terminate status as a certified dealer, the Council shall proceed under the Utah Administrative Procedures Act, Chapter 4, Title 63G.

B. All proceedings to suspend a certified dealer or to terminate status as a certified dealer are designated as informal proceedings under the Utah Administrative Procedures Act.

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. At the election of the presiding officer, other members of the Council may issue recommendations to the hearing officer after the close of the hearing.

D. The Notice of Agency Action, or any petition filed in

connection with it, required under the Utah Administrative Procedures Act, shall include a statement of the grounds for termination, and the remedies required to cure the violation.

E. After the date of service of the Notice of Agency Action, the certified dealer and its agents shall not conduct any investment transaction with any public treasurer if so ordered by the Money Management Council. The order issued by the hearing officer at the conclusion of the proceedings shall lift this prohibition if the order allows the certified dealer to keep its status as a certified dealer.

**KEY: cash management, public investments, securities regulation, stock brokers**

**August 27, 2001 51-7-3(1)  
Notice of Continuation February 26, 2016 51-7-18(2)(b)(v)**

**R638. Natural Resources, Geological Survey.****R638-1. Acceptance and Maintenance of Confidential Information.****R638-1-1. Authority, Purpose, and Scope.**

a. Authority: This rule is authorized under Subsection 63-73-6(2) UCA.

b. Purpose: This rule enables the Utah Geological Survey to have access to confidential information which it otherwise could not acquire, or which is beyond the financial capability of the Survey to acquire.

c. Scope: This rule provides: (1) guidelines for determining whether or not to accept confidential information, (2) the types of information that will be maintained as confidential, and (3) the process to be used for accepting and maintaining confidential information.

**R638-1-2. Definitions.**

a. "Information" as used in this rule refers to data, statistics, reports, samples and other facts, whether analyzed or processed or not, pertaining to the geology of Utah.

b. "Internal Records" are preliminary documents and notes compiled by employees of the Survey or its contractors in the process of geologic investigations.

c. "Confidential Information" as used in this rule refers to geologic information given to the Survey or purchased by the Survey with the stipulation that the information be held confidential.

d. "Board" is the Board of the Utah Geological Survey.

e. "Director" is the Director of the Utah Geological Survey, or State Geologist.

f. "Survey" is the Utah Geological Survey.

g. "Geology" refers to the geology and the mineral occurrences of the State.

h. "Source" is the individual, agency, or organization who provides information to the Survey and stipulates that it is confidential information.

**R638-1-3. General Provisions.**

a. It is the policy of the Survey and the Board that unless otherwise specified herein, this rule shall be interpreted liberally in favor of public disclosure of information maintained by the Survey. Further, all of the Survey's conclusions and recommendations on geological matters will be made available to the public in accordance with this rule.

b. The Director is the custodian of Survey records.

c. The Director will report regularly to the Board concerning the following: the types of information received by the Survey as confidential; the frequency and nature of requests for access/usage of Survey information which has not yet been made public; and determinations including reasons for not accepting information. The Board will hear appeals of decisions made by the Director and may override the Director but no Board action shall in any way jeopardize the level of confidentiality assigned by the source.

d. The Director has the authority to refuse information that has been offered to the Survey if it appears to be not in the best interest of the State or the Survey. Without disclosing the confidentiality of the offered information, the Director may consult with the Governor of the State of Utah in exercising this authority.

e. Information will be maintained according to the source-designated level of Category B or C. The Director will sign all documents pertaining to confidentiality.

f. Information can be declassified only by written direction from the source or at the expiration period for confidentiality agreed upon by the source and the Survey.

g. Unless otherwise directed by the source, access to confidential information by Survey employees must be approved in writing by the Geologic Program Manager supervising the

individual requesting access and by the Director.

h. Requests for information from outside the Survey must be in writing with a description of the records requested. The Survey will have thirty days to respond. If the information requested is determined to be confidential, the Survey must state the reason for the determination. A denial of access to confidential information may be appealed to the Board.

i. For the purpose of obtaining information the Survey deems necessary or desirable from the Federal Government concerning the geology pertaining to the lands of Utah, the Director may establish procedures deemed necessary by the Federal source in order to maintain confidentiality consistent with relevant Federal law.

**R638-1-4. Procedures.**

a. Geologic information will be categorized as follows:

1. Category A: Information that is public and not maintained as confidential.

(a) Survey publications.

(b) Survey open-file reports.

(c) Samples and core accepted for storage.

(d) Inhouse-generated files and computer information unless otherwise covered in Category B.

2. Category B: Information that is temporarily withheld from the public until made available by open filing or publication of the information.

(a) Predecisional documents leading to a geologic explanation or publication.

(b) Manuscripts received from non-Survey sources.

(c) Geologic information and conclusions drawn by the Survey that have been contracted or legislatively mandated for other state agencies.

(d) Determination for Category B information will be made by the Director based upon:

(1) a likelihood that premature release would result in a competitive advantage or disadvantage to an individual or organization;

(2) a likelihood that premature release would result in misuse or harm the public;

(3) a judgement that premature release would compromise the Survey's ability to analyze data, or complete and make public the conclusions of a project in a timely manner.

(e) Category B information may be open-filed at any time by the Director.

3. Category C: Information that is not to be made available to the public except under terms and conditions agreed upon at the time of its acceptance.

(a) Information given to the Survey by other governmental agencies and classified as confidential by them.

(b) Information given to the Survey by private individuals or organizations and classified as confidential by them.

(c) Information purchased by the Survey with the understanding that it will be maintained as confidential.

b. Geologic information designated confidential will be recorded as received by the Survey at the requested level of confidentiality and maintained in locked files with controlled access.

**R638-1-5. Anticipated Impacts Regarding Costs of Compliance.**

a. This rule applies to geologic information provided voluntarily by individuals or organizations to the Survey. Therefore, sources of information have no mandated costs in order to comply with these provisions.

b. The Survey will budget sufficient funds from its current budget to accomplish the purposes and objectives of this rule.

**KEY: disclosure requirements**

1993

63-73-4(5)

Notice of Continuation February 17, 2016

**R651. Natural Resources, Parks and Recreation.****R651-204. Regulating Waterway Markers.****R651-204-1. Placement of Waterway Markers.**

No person shall place on or near the waters of this state any waterway marker, except a diver's flag, without written authorization by a federal agency operating within federal authority or by the division.

**R651-204-2. Hazards to Navigation.**

## (1) Definitions

(a) "Hazard to Navigation" means, any object permanently placed on or under the waters of this state that is an obstacle to navigation, including but not limited to:

- (i) pier or shoreline dock greater than 75 feet
- (ii) floating dock or inflatable recreational equipment;
- (iii) commercial fishing or scientific devices;
- (iv) navigational aids;
- (v) slalom courses, jump/rail or other recreational device;
- (vi) vessels moored outside of a designated mooring area.

(b) "Permanent" means intended to be left on the waterway overnight or unattended during the day.

(2) No person shall place any permanent or anchored objects on the waters of this state without written authorization by a federal agency operating within federal authority or by the division.

(3) All permitted water obstacles must be visibly marked with the owner's name with letters that are:

- (a) a contrasting color to the object; and
- (b) at least one inch in height with the letter width proportionate to the height.

(4) Each permitted water obstacle must be marked with lights if placed overnight. Marker lights

(a) must meet United States Coast Guard requirements;

(b) must float at least 39 inches above the water;

(c) must be an amber or white color flashing light that flashes a minimum of 30 flashes per minute and is visible for up to one-half mile; and

(d) if buoyed, the buoy must be self-righting and have a three inch silver radar reflective band around the top.

(5) Placement of water obstacles without a proper permit or failure to abide by the permit requirements constitute a violation of board rules and the water obstacles must be removed by the entity that placed the obstacle immediately upon notification. Water obstacles that create a hazard may be removed by the division at the owner's expense. Any damages incurred during removal by the division will not be the responsibility of the division.

**R651-204-3. Destruction of Waterway Markers.**

No person shall remove, destroy, or damage any waterway marker authorized to be placed by a federal agency or by the division; nor shall any person moor any vessel to a waterway marker, except mooring buoys.

**KEY: boating**

**July 8, 2013**

**73-18-4(1)(b)**

**Notice of Continuation January 7, 2016**

**R651. Natural Resources, Parks and Recreation.****R651-206. Carrying Passengers for Hire.****R651-206-1. Definitions.**

(1) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying:

(a) The verification of a license or permit applicant's vessel operation experience, appropriate first aid and CPR certificates and identifying information.

(b) The verification of an annual dockside or a five-year dry dock inspection of a vessel.

(2) "Certificate of maintenance and inspection" means a document produced by the Division and signed by a marine or vessel inspector and an agent of the outfitting company that a vessel has met the requirements of a required inspection. For river trip vessels, the certificate of maintenance and inspection will be issued to the outfitting company and not an individual vessel.

(3) "Certificate of outfitting company registration" means a document produced by the Division annually, indicating that an outfitting company is registered and in good standing with the Division.

(4) "Certifying experience" means vessel operation or river running experience obtained within ten years of the date of application for the license or permit.

(5) "CFR" means U.S. Code of Federal Regulations.

(6) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

(7) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For river trip vessels, the annual dockside inspection may be performed at the company's place of business.

(8) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

(9) "Flatwater River Area" means all river sections defined in R651-215-10.

(10) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

(11) "License" means a Utah Carrying Passengers for Hire (CPFH) License or a U.S. Coast Guard Master's License.

(12) "Low capacity vessel" means a manually propelled vessel designed or intended to carry no more than two occupants.

(13) "Marine inspector" means a person who has been trained to perform a dry dock inspection and is registered with the Division as a person who is eligible to perform a dry dock inspection of a vessel.

(14) "Permit" means a Utah Carrying Passengers for Hire (CPFH) Crew Permit.

(15) "River trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A river trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

(16) "Racing shell" means a long, narrow watercraft outfitted with long oars and sliding seats; and specifically designed for racing or exercise.

(17) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.

(18) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.

(a) Towing for hire is considered carrying passengers for hire

(b) Towing for hire does not include a person or entity performing salvage or abandoned vessel retrieval operations.

(19) "Vessel inspector" means a person who has been trained to perform a dockside inspection and is registered with the Division as a person who is eligible to perform a dockside inspection on a vessel.

(20) "Whitewater river" all rivers not designated as a flatwater river area or other Division recognized whitewater rivers in other states.

**R651-206-2. Outfitting Company Responsibilities.**

(1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation. Outfitting companies include, but are not limited to, fishing guides, waterski or sailing schools, river trip companies and tour boat operators.

(a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:

(i) Evidence of a current and valid business license;

(ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s) issued by an appropriate federal or state land managing agency;

(iii) Evidence of general liability insurance coverage; and

(iv) Payment of a \$150 fee for an outfitting company whose place of business is physically located within the State of Utah, or

(v) Payment of a \$200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.

(b) Owners and employees of a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area and operating within that Migratory Bird Production Area shall not be considered an outfitting company.

(2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:

(a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;

(b) Obtained the appropriate first aid and CPR certificates; and

(c) Completed the prescribed application form with true and correct identifying information.

(4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:

(a) The outfitting company's, or agent's negligence caused

personal injury or death as determined by due process of law;

(b) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license or permit for an employee or others;

(d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;

(e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or

(g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a training log for each of its vessel operators.

(7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:

(a) Passenger count;

(b) A discussion of safety protocols and emergency operations with passengers on board the vessel;

(c) A check of the vessel's required carriage of safety equipment;

(d) A check of the vessel's communication systems;

(e) A check of the operation and control of the vessel's steering controls and propulsion system; and

(f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a river trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.

(12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.

(13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's:

(a) Drug free workplace policy;

(b) A passenger manifest and trip voyage plan;

(c) Trip Authorization permit;

(d) A vessel's maintenance and inspection files; or

(e) A vessel operator's training log.

(14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued

certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take-out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

### **R651-206-3. Utah Carrying Passengers for Hire (CPFH) License and Utah Crew Permit.**

(1) No person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person has in his possession a valid and appropriately endorsed Utah CPFH License or Utah Crew Permit issued by the Division, or a valid and appropriately endorsed U.S. Coast Guard Master's License.

(a) When carrying passengers for hire on a motorboat on the waters of Bear Lake, Flaming Gorge or Lake Powell, the operator must have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) A Utah CPFH License is valid on the waters of Bear Lake, Flaming Gorge, and Lake Powell when the holder is carrying or leading persons for hire on non-motorized vessels.

(c) A Utah CPFH License or Utah Crew Permit, with the appropriate river endorsement, is valid when operating a vessel exiting from a river to the first appropriate and usable take-out or launch ramp on a lake or reservoir.

(d) A boat operator, carrying passengers within a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area shall comply with the guidelines for safe boat operation adopted by the management of the Migratory Bird Production Area.

(2) License and Permit Requirements.

(a) The license or permit must be accompanied by current and appropriate first aid and CPR certificates. A photocopy of both sides of the first aid and CPR certificates is allowed when carrying passengers for hire on rivers.

(b) A license with a "Lake and Reservoir Captain" or instructor endorsement is required when carrying passengers for hire on any lake or reservoir.

(c) A license with a "Tow Vessel Captain" endorsement is required when towing or assisting other vessels for hire on waters of this state.

(d) A license with a "Whitewater River guide" endorsement is required when carrying passengers for hire on any river section, including "whitewater," and "flatwater" river designations.

(e) A license with a "Flatwater River Guide" endorsement is required when carrying passengers for hire on any Flatwater river area.

(f) A permit with a "Lake and Reservoir Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Lake and



Reservoir Captain" endorsement.

(g) A permit with a "Tow Vessel Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Tow Vessel Captain" endorsement.

(h) A permit with a "Whitewater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with a "Whitewater River Guide" endorsement.

(i) A permit with a "Flatwater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with either a "Whitewater River Guide" or "Flatwater River Guide" endorsement.

(j) All Boatman Permits issued by the Division are expired.

(3) Requirements to obtain a CPFH License.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first license, the application, testing, and issuance of the license shall be done in a manner accepted by the Division.

(c) The applicant shall pay a \$50 application fee for the license and first endorsement. A fee of \$10 will be charged for each additional license endorsement.

(d) The applicant shall choose from the five types of license endorsements:

(i) Lake and Reservoir Captain LRC

(ii) Lake and Reservoir Instructor (LRI)

(iii) Tow Vessel Captain TVC

(iv) Whitewater River Guide (WRG)

(v) Flatwater River Guide FRG

(e) The applicant shall provide an original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an "Emergency Response" course or an equivalent course from a reputable provider whose curriculum is in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the most current Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) A Utah Vessel Operator Permit holder, whose permit was issued prior to January 1, 2008, and who is renewing and converting their permit to a Utah CPFH License, is exempt from showing proof of completion of a National Association of State Boating Law Administrators (NASBLA) approved boating safety course.

(g) The applicant shall complete a multiple-choice, written examination administered by an agent of the Division:

(i) 80 percent correct is required to pass.

(ii) In relation to the respective endorsement, the examination will have a specific focus on the carrying passengers for hire laws and rules along with general safety, etiquette and courtesy.

(iii) If an applicant fails to pass the exam, there is a seven-day waiting period to re-test, and

(iv) Pay a \$15 fee for each re-test.

(h) The applicant shall provide documentation of vessel operation experience that has been obtained within 10 years previous to the date of application.

(i) Lake and Reservoir Captain LRC - a minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Lake and Reservoir Instructor (LRI) - a minimum of at least 40 hours of actual vessel operation experience. At least 10 of these hours must be obtained through mentored coaching while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the instructor will be carrying passengers for hire.

(iii) Tow Vessel Captain (TVC) - A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iv) Whitewater River Guide (WRG) - A minimum of nine river trips on whitewater river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river section on which the operator will be carrying passengers for hire. A Whitewater River Guide endorsement meets the requirements for an Flatwater River Guide endorsement.

Flatwater River Guide (FRG) - A minimum of six river trips on any river section. At least one of these trips must be obtained while operating the vessel or similar vessel, on the respective river section on which the operator will be carrying passengers for hire.

(4) A Utah CPFH License is valid for a term of five years. The license will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah CPFH License may be renewed within the six months prior to its expiration.

(b) To renew a Utah CPFH License, the applicant must complete the prescribed application form along with adhering to the requirements described above. A current license holder may renew his license in a manner accepted by the Division

(c) The renewed license will have the same month and day expiration as the original license.

(d) A Utah License that has expired shall not be renewed and the applicant shall be required to apply for a new license.

(5) Requirements to obtain a Utah Crew Permit.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first Crew Permit, the application and issuance of the Crew Permit shall be done in a manner accepted by the Division.

(c) The applicant shall pay a \$50 application fee for the original permit and first endorsement. A \$10 fee shall be charged for each additional crew permit endorsement.

(d) The applicant shall choose from the four types of

permit endorsements:

- (i) Lake and Reservoir Crew (LRCP)
  - (ii) Tow Vessel Crew TVCP
  - (iii) Whitewater River Crew (WRCP)
  - (iv) Flatwater River Crew FRCP
- (e) The applicant shall provide original proof of current and valid first aid and CPR certifications:
- (i) The first aid certificate must be issued from a reputable provider whose curriculum is in accordance with the USDOT "Standard" First Aid.
  - (ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the most current Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).
  - (iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.
  - (f) The applicant shall provide documentation of vessel operation experience that has been obtained within the 10 years previous to the date of application.
    - (i) Lake and Reservoir Crew (LRCP) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.
    - (ii) Tow Vessel Crew (TVCP) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.
    - (iii) Whitewater River Crew (WRCP) - A minimum of three river trips on "whitewater" rivers or river sections similar to those they will be guiding on. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river or river section on which the operator will be carrying passengers for hire. A Whitewater River Crew endorsement meets the requirements for an Flatwater River Crew endorsement.
    - (iv) Flatwater River Crew (FRCP) - A minimum of three river trips on any river or river section. At least one of these trips must be obtained while operating the vessel on a respective river or river section on which the operator will be carrying passengers for hire.
- (6) A Utah Crew Permit is valid for a term of five years. The permit will expire five years from the date of issue, unless suspended or revoked.
- (a) A Utah Crew Permit may be renewed within the six months prior to its expiration.
  - (b) To renew a Utah Crew Permit, the applicant must complete the prescribed application form along with the requirements described above. A current permit holder may renew his license in a manner accepted by the Division.
  - (c) The renewed permit will have the same month and day expiration as the original permit.
  - (d) A Utah Crew Permit that has expired shall not be renewed and the applicant shall be required to apply for a new permit.
  - (e) A Utah Crew Permit holder who upgrades to a Utah License, within one year of when the permit was issued, shall receive a \$25 discount on the fee for the Utah License.
  - (7) In the event a Utah CPFH License or a Utah Crew permit is lost or stolen, a duplicate license or permit may be

issued with the same expiration date as the original license or permit.

- (a) The applicant must complete the prescribed application form.
- (b) The fee for a duplicate license or permit is \$15.
- (8) Current Utah CPFH License and Utah Crew Permit holders shall notify the Division within 30 days of any change of address.
- (9) A Utah CPFH License or Utah Crew Permit may be suspended, revoked, or denied for a length of time determined by the Division director, or individual designated by the Division director, if one of the following occurs:
  - (a) The license or permit holder is convicted of three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder during a three-year period.
  - (b) The license or permit holder is convicted of driving under the influence of alcohol or any drug while carrying passengers for hire, or refuses to submit to any chemical test that determines blood or breath alcohol content resulting from an incident while carrying passengers for hire;
  - (c) The license or permit holder's negligence or recklessness causes personal injury or death as determined by due process of the law;
  - (d) The license or permit holder is convicted of utilizing a private trip permit to carry passengers for hire;
  - (e) The license or permit holder is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.
  - (f) The Division determines that the license or permit holder intentionally provided false or fictitious statements or qualifications to obtain the license or permit.
- (10) A Utah CPFH License or Utah Crew Permit holder shall not carry passengers for hire while operating an unfamiliar vessel or operating on an unfamiliar lake, reservoir, or river section, unless there is a license holder aboard who is familiar with the vessel and the lake, reservoir, or river section. An exception to this rule allows a license or permit holder to lead passengers for hire on a lake, reservoir, or a flatwater river area, as long as there is a license holder who is familiar with the vessel and the lake, reservoir, or river section and remains within sight of the rest of the group.
- (11) Number of passengers carried for each license or permit holder.
  - (a) On a vessel that is carrying more than 49 passengers for hire, there shall be at least one license holder and one permit holder or two license holders on board.
  - (b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore, there shall be an additional license or permit holder on board.
  - (c) On a vessel carrying passengers for hire, there shall be a minimum of one license or permit holder on board for each passenger deck on the vessel.
- (12) Low capacity vessels being led requirements.
  - (a) On all river sections, except as noted in Subsection (b) below, there shall be at least one qualified license or permit holder for every four low capacity vessels being led in a group.
  - (b) On lakes, reservoirs, there shall be at least one qualified license or permit holder for every eight low capacity vessels, or racing shells being led in a group; and flatwater river area, there shall be at least one qualified license or permit holder for every six low capacity vessels or racing shells being led in a group.
- (13) A license or permit holder shall not operate a vessel carrying passengers for hire for more than 12 hours in a 24 hour period.
- (14) A license or permit holder shall conduct a safety and emergency protocols discussion with passengers prior to the vessel getting underway. This discussion shall include the

topics of water safety, use and stowage of safety equipment, wearing and usage of life jackets and initiating the rescue of a passenger(s).

(15) Vessel operators who are licensed or permitted to carry passengers for hire in another state, and possess a state-issued vessel captain's license, or similar license or permit accepted and recognized by the Division, where the state has similar vessel operator licensing provisions, shall not be required to obtain and possess a Utah CPFH License or Utah Crew Permit as required by this section.

**R651-206-4. Additional PFD Requirements for Vessels Carrying Passengers for Hire.**

(1) Type I PFDs are required. Each vessel shall have an adequate number of Type I PFDs on board, that meets or exceeds the number of persons on board the vessel. A Type V PFD may be used in lieu of a Type I PFD if the Type V PFD is approved for the activity in which it is going to be used.

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel must be of an appropriate type and size for infants, children and youth passengers.

(3) Type I PFDs or Type V PFDs - used in lieu of the Type I PFD, must be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs are being stored on the vessel, the PFDs shall be stored in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD must be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) The Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length. CPFH vessels on rivers are exempt from carrying a ring life buoy and must comply with R651-215-2 and R651-215-8.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two Type IV PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) If U.S. Coast Guard approved Type I PFDs are not available for infants under the weight of 30 pounds, Type II PFDs may be used, provided they are the correct size for the intended wearer.

(8) On rivers, any low capacity vessel operator or a working employee of the outfitting company, may wear a Type III PFD in lieu of the Type I PFD.

(9) On lakes and reservoirs, any low capacity vessel operator or a working employee may wear or carry, a Type III PFD may be carried or worn in lieu of the required Type I PFD.

(10) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(11) The license or permit holder is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

**R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.**

(1) Each motorboat that carries passengers for hire, must carry a minimum of one type B-1 fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers for hire and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, and carrying passengers for hire, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a

readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

**R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.**

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or, have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors.

Each vessel carrying passengers for hire shall be equipped with carbon monoxide detectors in each enclosed passenger area.

(3) Survival Craft.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry an appropriate number of life rafts or other life-saving apparatus respective to the number of passengers carried on board.

(4) Visual distress signals.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry a minimum of three visual distress signal flares that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel must carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) River trip vessels are only required to carry a map of the water body or river or river sections.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle. On lakes and/or reservoirs, low capacity vessels and racing shells are exempt from this requirement.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) Portable lighting.

Each vessel carrying passengers for hire shall carry on board, at least one portable, battery-operated light per operator or crew member. That portable battery-operated light shall be in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

(c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(10) Marine toilets and sanitary facilities.

(a) Each vessel carrying more than six passengers for hire shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable privacy enclosures are not practical.

(b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.

(c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.

(d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.

(e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.

(f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.

#### **R651-206-7. Towing Vessels for Hire Requirements.**

(1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall register with the Division as an outfitting company and pay the appropriate fee.

(2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.

(3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.

(4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.

(5) A person or entity towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident.

(6) A person or entity towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park ranger, other law enforcement officer, or emergency and search and rescue

personnel make such a request for emergency assistance.

(7) The owner of a vessel engaged towing vessels for hire shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.

(8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150 hp gasoline engine(s) or a 90 hp diesel engine(s). The towing vessel should be as large or larger than the average vessel it will be towing.

(9) A vessel engaged in towing vessels for hire, must have at least one Tow Vessel License holder on board.

(10) A person or entity towing vessels for hire shall provide appropriate types of training for each of its license and permit holders. Each vessel operator shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.

(11) The operator and any crew members on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The operator of a vessel engaged in towing vessels for hire is responsible to have all occupants of a vessel being towed to wear a properly fitted PFD for the duration of the tow.

(12) A person or entity engaged in towing vessels for hire must keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:

(a) Assisted vessel's assigned bow number.

(b) Name of assisted vessel's owner or operator, including address and phone number.

(c) Number of persons on board the assisted vessel.

(d) Nature of assistance.

(e) Date and time assistance provided.

(f) Location of the assisted vessel.

(g) The operator of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the company's place of business.

(h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.

(13) Additional Equipment Requirements for Vessels Towing for Hire.

(a) PFDs.

(i) Shall carry a sufficient number of Type I PFDs for persons on board a towed vessel.

(ii) Shall carry a minimum of two Type IV PFDs, one of which must be a ring life buoy.

(b) Vessel shall be equipped with a depth finder.

(c) Tow Line.

(i) Shall have a minimum of 100 feet of 5/8" line with a tow bridle.

(ii) Towing vessel shall be equipped with a towing post or reinforced cleats.

(d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.

(e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment.

(i) A white spot light with a minimum brightness of 500,000 candle power.

(ii) It is recommended that a vessel be equipped with electronic RADAR equipment.

(f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.

(g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.

(i) A knife capable of cutting the vessel's towline;

(ii) A boat hook;

(iii) A minimum of four six-inch fenders;

(iv) Binoculars;

- (v) A jump starting system;
- (vi) A tool kit and spare items for repairs on assisting vessel; and
- (vii) Damage control items for quick repairs to another vessel.

**R651-206-8. Maintenance and Inspections of Vessels Carrying Passengers for Hire.**

(1) Each outfitting company carrying passengers for hire shall have an ongoing vessel maintenance and inspection program. The vessel maintenance and inspection program shall include the structural integrity, flotation, propulsion of the vessel, and equipment associated with passenger safety.

(2) The annual vessel maintenance and inspection program certification will be required beginning January 1, 2009. The five-year vessel inspections will be required no later than January 1, 2014.

(3) The Division shall prepare and maintain a "Carrying Passengers for Hire Vessel Inspection Manual".

(a) The Division shall establish a committee to oversee, maintain, and recommend any substantive changes in the "Carrying Passengers for Hire Vessel Inspection Manual".

(i) The members of this committee shall be selected by the Boating Advisory Council and shall report directly to the Boating Advisory Council.

(ii) This committee shall consist of five members: two members who will represent the non-float trip vessel carrying passengers for hire industry in Utah; two members who will represent the float trip vessel carrying passengers for hire industry in Utah; and one member who will represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(iii) This committee shall convene when information regarding substantive changes to the "Carrying Passengers for Hire Vessel Inspection Manual" has been presented to the Boating Advisory Council.

(b) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers for Hire Vessel Inspection Manual" that do not pertain to River Trip Vessels.

(i) This committee shall consist of five members: three members who represent the carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

(c) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers For Hire Vessel Inspection Manual" that pertain to River Trip Vessels.

(i) This committee shall consist of five members: three members who represent the River Trip Vessel carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

**KEY: boating, parks  
October 22, 2015**

**Notice of Continuation January 7, 2016**

**73-18-4(1)(d)**

**R651. Natural Resources, Parks and Recreation.**

**R651-207. Registration Fee.**

**R651-207-1. Yearly Registration Fee.**

The registration fee shall be \$30 per year.

**KEY: boating**

**February 11, 2015**

**Notice of Continuation January 7, 2016**

**73-18-7(2)(b)**

**R651. Natural Resources, Parks and Recreation.****R651-208. Backing Plates.****R651-208-1. Backing Plates.**

On vessels where an assigned number on the hull or superstructure would not be visible or where the type of hull material used would make it impractical to attach an assigned number, the assigned number and registration decals may be mounted on a backing plate and displayed as required in Subsection 73-18-7 (4) of the Utah Code Annotated and Rule R651-212.

**KEY: boating****1987****Notice of Continuation January 7, 2016****73-18-7(4)****73-18-7(17)(a)**

**R651. Natural Resources, Parks and Recreation.**

**R651-210. Change of Address.**

**R651-210-1. Change of Address.**

The registered owner of a motorboat or sailboat, after notifying the division or agent of the division of his change of address, shall note the new address on his current registration card.

**KEY: boating**

**1987**

**73-18-7(13)(b)**

**Notice of Continuation January 7, 2016**



**R651. Natural Resources, Parks and Recreation.****R651-211. Assigned Numbers.****R651-211-1. Assigned Numbers.**

The assigned number will consist of the prefix letters, "UT", to designate the State of Utah, one to four numerals, and two suffix letters that may designate a certain type of vessel. The suffix letters that designate a certain type of vessel are: AB - Airboat; DL - marine dealer or manufacturer; EX - Exempt (for official government business only). All other suffixes shall be randomly assigned.

**R651-211-2. Assigned Number Reserved for the Division.**

"UT 2628 BP" shall be the assigned number reserved for Division use in boating education and law enforcement training, and shall not be assigned to any vessel.

**KEY: boating**

January 15, 2005

73-18-7(17)(a)

Notice of Continuation January 7, 2016

**R657. Natural Resources, Wildlife Resources.****R657-5. Taking Big Game.****R657-5-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

**R657-5-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(s) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.

**R657-5-3. License, Permit, and Tag Requirements.**

(1) A person may engage in hunting protected wildlife or

in the sale, trade, or barter of protected wildlife or its parts in accordance with Section 23-19-1 and the rules or guidebooks of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

**R657-5-4. Age Requirements and Restrictions.**

(1)(a) Subject to the exceptions in subsection (c), a person 12 years of age or older may apply for or obtain a permit to hunt big game. A person 11 years of age may apply for a permit to hunt big game if that person's 12th birthday falls within the calendar year for which the permit is issued.

(b) A person may not use a permit to hunt big game before their 12th birthday.

(c) A person who is younger than 14 years of age may not apply for or obtain the following types of big game permits issued by the division through a public drawing:

(i) premium limited entry;

(ii) limited entry;

(iii) once-in-a-lifetime; and

(iv) cooperative wildlife management unit.

(d) A person who is 13 years of age may apply for or obtain a type of permit listed in Subsection(1)(c) if that person's 14th birthday falls within the calendar year for which the permit is issued.

(e) antlerless deer, antlerless elk, and doe pronghorn permits are not limited entry, premium limited entry or cooperative wildlife management unit permits for purposes of determining a 12 or 13 year olds eligibility to apply for or obtain through a public drawing administered by the division.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

**R657-5-5. Duplicate License and Permit.**

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

**R657-5-6. Hunting Hours.**

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

**R657-5-7. Prohibited Weapons.**

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic;

(b) any light enhancement device or aiming device that casts a visible beam of light; or

(c) a firearm equipped with a computerized targeting system that marks a target, calculates a firing solution and automatically discharges the firearm at a point calculated most likely to hit the acquired target.

(3) Nothing in this Section shall be construed as prohibiting laser range finding devices.

**R657-5-8. Rifles and Shotguns.**

(1) The following rifles and shotguns may be used to take big game:

- (a) any rifle firing centerfire cartridges and expanding bullets; and
- (b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

**R657-5-9. Handguns.**

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

**R657-5-10. Muzzleloaders.**

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

- (a) can be loaded only from the muzzle;
- (b) has open sights, peep sights, or a variable or fixed power scope, including a magnifying scope;
- (c) has a single barrel;
- (d) has a minimum barrel length of 18 inches;
- (e) is capable of being fired only once without reloading;
- (f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;
- (g) is loaded with black powder or black powder substitute, which must not contain smokeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A bullet 130 grains or heavier, or a sabot 170 grains or heavier must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit for a big game hunt may:

- (i) use only muzzleloader equipment authorized in this Subsections (1) and (2) to take the species authorized in the permit; and
- (ii) not possess or be in control of a rifle or shotgun while in the field during the muzzleloader hunt.

(A) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl Guidebook, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

(4) A person who has obtained an any weapon permit for a big game hunt may use muzzleloader equipment authorized in

this Section to take the species authorized in the permit.

**R657-5-11. Archery Equipment.**

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

- (a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and
- (b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;
- (c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and
- (d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

- (a) a crossbow, except as provided in Subsection (5) and Rule R657-12;
- (b) arrows with chemically treated or explosive arrowheads;
- (c) a mechanical device for holding the bow at any increment of draw, except as provided in Subsection (5) and Rule R657-12;
- (d) a release aid that is not hand held or that supports the draw weight of the bow, except as provided in Subsection (5) and Rule R657-12; or
- (e) a bow with a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit for a big game hunt may:

- (i) use only archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit; and
- (ii) not possess or be in control of a crossbow, draw-lock, rifle, shotgun or muzzleloader while in the field during an archery hunt.

(A) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl Guidebook, respectively, and possessing only the weapons authorized to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt, provided the person is in compliance with the regulations of that hunt and possesses only the weapons authorized for that hunt;

(iii) livestock owners protecting their livestock;

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife; or

(v) a person possessing a crossbow or draw-lock under a certificate of registration issued pursuant to R657-12.

(5) A person who has obtained an any weapon permit for a big game hunt may use archery equipment authorized in this Section to take the species authorized in the permit, including a crossbow or draw-lock.

(6)(a) A crossbow used to hunt big game must have:

- (i) a minimum draw weight of 125 pounds;
- (ii) a minimum draw length of 14 inches, measured between the latch (nocking point) and where the bow limbs attach to the stock;
- (iii) an overall length of at least 24 inches; measured between the butt stock end and where the bow limbs attach to the stock; and

- (iv) a positive mechanical safety mechanism.
- (b) A crossbow arrow or bolt used to hunt big game must be at least 16 inches long and have:
  - (i) fixed broadheads that are at least 7/8 inch wide at the widest point; or
  - (ii) expandable, mechanical broadheads that are at least 7/8 inch wide at the widest point when the broadhead is in the open position.
- (c) It is unlawful for any person to:
  - (i) hunt big game with a crossbow during a big game archery hunt, except as provided in R657-12-8;
  - (ii) carry a cocked crossbow containing an arrow or a bolt while in or on any motorized vehicle on a public highway or other public right-of-way, except as provided in R657-12-4; or
  - (iii) hunt any protected wildlife with a crossbow:
    - (A) bolt that has any chemical, explosive or electronic device attached; or
    - (B) that has an attached magnifying aiming device, except as provided in Subsection (7).
- (7) A crossbow used to hunt big game during an any weapon hunt may have a fixed or variable magnifying scope.

#### **R657-5-12. Areas With Special Restrictions.**

- (1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-614-4.
- (b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.
- (c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).
- (2) Hunting is closed within the boundaries of all national parks unless otherwise provided by the governing agency.
- (3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.
- (4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.
- (5) In Salt Lake County, a person may:
  - (a) only use archery equipment to take buck deer and bull elk south of I-80 and east of I-15;
  - (b) only use archery equipment to take big game in Emigration Township; and
  - (c) not hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon.
- (6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.
- (7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.
- (8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the guidebook of the Wildlife Board for taking big game.
- (9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Scott M. Matheson Wetland Preserve.
- (10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

#### **R657-5-13. Spotlighting.**

- (1) Except as provided in Section 23-13-17:

- (a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to:
  - (i) take protected wildlife; or
  - (ii) locate protected wildlife while in possession of a rifle, shotgun, archery equipment, crossbow, or muzzleloader.
- (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 headlights 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.

#### **R657-5-14. Use of Vehicle or Aircraft.**

- (1)(a) A person may not use an airplane, drone, or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.
- (b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by any vehicle, device, or conveyance listed in Subsection (a).
- (c) Big game may be taken from a vessel provided:
  - (i) the motor of a motorboat has been completely shut off;
  - (ii) the sails of a sailboat have been furled; and
  - (iii) the vessel's progress caused by the motor or sail has ceased.
- (2)(a) A person may not use any type of aircraft, drone, or other airborne vehicle or device from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:
  - (i) transport a hunter or hunting equipment into a hunting area;
  - (ii) transport a big game carcass; or
  - (iii) locate, or attempt to observe or locate any protected wildlife.
- (b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).
- (3) The provisions of this section do not apply to the operation of an aircraft, drone, or other airborne vehicle or device in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

#### **R657-5-15. Party Hunting and Use of Dogs.**

- (1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.
- (2) A person may not use the aid of a dog to take, chase, harm or harass big game. The use of one blood-trailing dog controlled by leash during lawful hunting hours within 72 hours of shooting a big game animal is allowed to track wounded animals and aid in recovery.

#### **R657-5-16. Big Game Contests.**

- A person may not enter or hold a big game contest that:
  - (1) is based on big game or its parts; and
  - (2) offers cash or prizes totaling more than \$500.

#### **R657-5-17. Tagging.**

- (1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.
- (2) A person may not hunt or pursue big game after any of

the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

**R657-5-18. Transporting Big Game Within Utah.**

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

**R657-5-19. Exporting Big Game From Utah.**

(1) A person may export big game or its parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

**R657-5-20. Purchasing or Selling Big Game or Its Parts.**

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or its parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns of legally possessed big game as provided in Subsection 23-20-3, may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

**R657-5-21. Possession of Antlers and Horns.**

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-20; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns at any time. An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season published in the guidebook of the Wildlife Board for taking big game.

(b) A person must complete a wildlife harassment and habitat destruction prevention course annually to obtain the required authorization to gather shed antlers during the antler gathering season.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

**R657-5-22. Poaching-Reported Reward Permits.**

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication of guilt for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution under Section 23-20-4 for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn within any once-in-a-lifetime or limited entry area may receive a permit from the division to hunt the same species on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime 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 Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal 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 per species shall be issued to any one person in any one calendar year.

(5)(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.

(6) Any person who receives a poaching-reported reward permit must possess or obtain a Utah hunting or combination license and otherwise be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

**R657-5-23. General Archery Buck Deer Hunt.**

(1) The dates of the general archery buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment prescribed in R657-5-11 to take:

(a) one buck deer within the general hunt area specified on the permit for the time specified in the guidebook of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt any extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer and extended archery areas.

(5) If a person 17 years of age or younger obtains a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-23(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the guidebook of the Wildlife Board for taking big game.

**R657-5-24. General Any Weapon Buck Deer Hunt.**

(1) The dates for the general any weapon buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to

hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer, as provided in R657-5-27; and

(b) any person 17 years of age or younger on July 31 of the current year, may hunt the general archery, extended archery, general any weapon and general muzzleloader buck deer seasons applicable to the unit specified on the general any weapon buck deer permit, using the appropriate equipment as provided in Sections R657-5-7 through R657-5-11, respectively.

**R657-5-25. General Muzzleloader Buck Deer Hunt.**

(1) The dates for the general muzzleloader buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader, as prescribed in R657-5-10, to take one buck deer within the general hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within any deer Cooperative Wildlife Management unit.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who has obtained a general muzzleloader buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer, as provided in R657-5-27.

(b) If a person 17 years of age or younger purchases a general muzzleloader buck deer permit, that person may only hunt during the general muzzleloader deer season.

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the guidebooks of the Wildlife Board for taking big game.

**R657-5-26. Premium Limited Entry and Limited Entry Buck Deer Hunts.**

(1)(a) To hunt in a premium limited entry or limited entry buck deer area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck deer, general any weapon buck deer, or general muzzleloader buck deer hunting, except as specified in the guidebook of the Wildlife Board for taking big game.

(b)(i) The Wildlife Board may establish in guidebook a limited entry buck deer hunt on a general season buck deer unit.

(ii) The season dates for a limited entry hunt under this Subsection will not overlap the season dates for the underlying general season hunt on the unit.

(iii) A landowner association under R657-43 is not eligible to receive limited entry permits that occur on general season units.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, excluding deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, management, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a premium limited entry or limited entry buck permit may not:

(a) obtain any other deer permit, except an antlerless deer permit as provided in R657-5-27 and the guidebooks of the Wildlife Board; or

(b) hunt during any other deer hunt, except unsuccessful archery hunters may hunt within extended archery areas as provided in Subsection (7).

(5)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected premium limited entry and limited entry buck deer hunts.

(b) A person that obtains a premium limited entry or limited entry buck deer permit with a multi-season opportunity may hunt during any of the following limited entry buck deer seasons established in the guidebooks of the Wildlife Board for the unit specified on the premium limited entry or limited entry buck deer permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking deer;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking deer; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking deer.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for premium limited entry or limited entry units.

(6) A premium limited entry or limited entry buck deer permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) deer cooperative wildlife management units; and

(c) Indian tribal trust lands.

(7) A person who possesses an archery buck deer permit for a premium limited entry or limited entry unit, including a permit with a multi-season opportunity, may hunt buck deer within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a buck deer during the premium limited entry or limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the multi-season limited entry or limited entry buck deer permit; and

(ii) the Archery Ethics Course Certificate of Completion.

#### **R657-5-27. Antlerless Deer Hunts.**

(1)(a) To hunt antlerless deer, a hunter must obtain an antlerless deer permit.

(b) A person may obtain only one antlerless deer permit or a two-doe antlerless deer permit through the division's antlerless big game drawing.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe antlerless deer permit allows a person to take two antlerless deer using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt antlerless deer on any deer cooperative wildlife management unit unless that person obtains an antlerless deer permit for that specific cooperative wildlife management unit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permits, except as provided in R657-44-3.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the applicable permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used, if hunting antlerless deer during an archery season or hunt; and

(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless deer during a muzzleloader season or hunt.

(b)(i) General buck deer for archery, muzzleloader, or any weapon;

(ii) General bull elk for archery, muzzleloader, or any weapon;

(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(iv) Limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(v) Limited entry bull elk for archery, muzzleloader, any weapon, or multi-season; or

(vi) Antlerless elk.

(c) A person that possess an unfilled antlerless deer permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless deer as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.

#### **R657-5-28. General Archery Elk Hunt.**

(1) The dates of the general archery elk hunt are provided in the guidebooks of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) an antlerless elk or a bull elk on a general any bull elk unit, excluding elk cooperative wildlife management units;

(ii) an antlerless elk or a spike bull elk on a general spike bull elk unit, excluding elk cooperative wildlife management units;

(iii) an antlerless elk or a bull elk on extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion on their person while hunting.

(4) A person who has obtained an archery elk permit may

not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3) and by the guidebooks of the Wildlife Board for taking big game.

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the guidebook of the Wildlife Board for taking big game.

**R657-5-29. General Season Bull Elk Hunt.**

(1) The dates and areas for the general season bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general any weapon bull elk hunting:

- (a) Salt Lake County south of I-80 and east of I-15; and
- (b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull elk units are closed to spike bull elk permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk, on a general season any bull elk unit. Spike bull elk units are closed to any bull elk permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull elk or any bull elk, as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

**R657-5-30. General Muzzleloader Bull Elk Hunt.**

(1) The dates and areas for general muzzleloader bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general muzzleloader bull elk hunting:

- (a) Salt Lake County south of I-80 and east of I-15; and
- (b) elk cooperative wildlife management units.

(2)(a) General muzzleloader bull elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader, prescribed in R657-5-10, to take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader, as prescribed in R657-5-10, to take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) On selected units identified in the guidebook of the Wildlife Board for taking big game, a person who has obtained a general muzzleloader bull elk permit may use muzzleloader equipment to take either an antlerless elk or a bull elk.

(4) A person who has obtained a general muzzleloader bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

**R657-5-31. Youth General Any Bull Elk Hunt.**

(1)(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31 of the current year.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A qualified person may obtain a youth any bull elk permit only once during their life.

(2) The youth any bull elk hunting season and areas are

published in the guidebook of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including antlerless elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk or antlerless elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

(5) Preference points shall not be awarded or utilized when applying for or obtaining a youth general any bull elk permit.

**R657-5-32. Limited Entry Bull Elk Hunts.**

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry bull elk permit for the area.

(2)(a) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except as provided in Subsection (5) and excluding elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected limited entry bull elk units.

(b) A person that obtains a limited entry bull elk permit with a multi-season opportunity may hunt during any of the following limited entry bull elk seasons established in the guidebooks of the Wildlife Board for the unit specified on the limited entry bull elk permit:

- (i) archery season, using only archery equipment prescribed in R657-5-11 for taking elk;
- (ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking elk; and
- (iii) any weapon season, using any legal weapon prescribed in R657-5 for taking elk.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for limited entry units.

(4) A limited entry bull elk permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

- (a) areas closed to hunting;
- (b) elk cooperative wildlife management units; and
- (c) Indian tribal trust lands.

(5) A person who possesses any limited entry archery bull elk permit, including a permit with a multi-season opportunity, may hunt bull elk within any extended archery area during the established extended archery season for that area, provided the person:

- (a) did not take a bull elk during the limited entry hunt;
- (b) uses the prescribed archery equipment for the extended archery area;
- (c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and
- (d) possesses on their person while hunting:
  - (i) the limited entry bull elk permit; and
  - (ii) the Archery Ethics Course Certificate of Completion.
- (6) "Prescribed legal weapon" means for purposes of this subsection:

(a) archery equipment, as defined in R657-5-11, when hunting the archery season, excluding a crossbow or draw-lock;

(b) muzzleloader equipment, as defined in R657-5-10, when hunting the muzzleloader season; and

(c) any legal weapon, including a muzzleloader and



crossbow with a fixed or variable magnifying scope or drawlock when hunting during the any weapon season.

(7)(a) A person who has obtained a limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(8) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (5) and R657-5-33(3).

### **R657-5-33. Antlerless Elk Hunts.**

(1) To hunt antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt antlerless elk on an elk cooperative wildlife management unit unless that person obtains an antlerless elk permit for that specific cooperative wildlife management unit.

(3)(a) A person may obtain three elk permits each year, in combination as follows:

(i) a maximum of one bull elk permit;

(ii) a maximum of one antlerless elk permit issued through the division's antlerless big game drawing; and

(iii) a maximum of two antlerless elk permits acquired over the counter or on-line after the antlerless big game drawing is finalized, including antlerless elk:

(A) control permits, as described in Subsection (5);

(B) depredation permits, as described in R657-44-8;

(C) mitigation permit vouchers, as defined in R657-44-2(2); and

(D) private lands only permits, as described in Subsection (6)(b). Antlerless elk mitigation permits obtained by a landowner or lessee under R657-44-3 do not count towards the annual three elk permit limitation prescribed in this subsection.

(i) "Mitigation permit" has the same meaning as defined in R657-44-2(2).

(c) For the purposes of obtaining multiple elk permits, a hunter's choice elk permit is considered a bull elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the applicable permits listed in Subsection (b), provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used, if hunting antlerless elk during an archery season or hunt; and

(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless elk during a muzzleloader season or hunt.

(b)(i) General buck deer for archery, muzzleloader or any legal weapon;

(ii) General bull elk for archery, muzzleloader or any legal weapon;

(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(iv) Limited entry buck deer for archery, muzzleloader, any legal weapon, or multi-season;

(v) Limited entry bull elk for archery, muzzleloader or any legal weapon; or

(vi) Antlerless deer or elk.

(c) A person that possess an unfilled antlerless elk permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless elk as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.

(5)(a) To obtain an antlerless elk control permit, a person must first obtain a big game buck, bull, or a once-in-a-lifetime permit.

(b) An antlerless elk control permit allows a person to take one antlerless elk using the same weapon type, during the same season dates, and within areas of overlap between the boundary of the buck, bull, or once-in-a-lifetime permit and the boundary of the antlerless elk control permit, as provided in the Antlerless guidebook by the Wildlife Board.

(c) Antlerless elk control permits are sold over the counter or online after the division's antlerless big game drawing is finalized.

(d) A person that possess an unfilled antlerless elk control permit and harvests an animal under the buck, bull, or once-in-a-lifetime permit referenced in Subsection (b), may continue hunting antlerless elk as prescribed in Subsection (b) during the remaining portions of the buck, bull, or once-in-a-lifetime permit season.

(6)(a) A private lands only permit allows a person to take one antlerless elk on private land within a prescribed unit using any weapon during the season dates and area provided in the Big Game guidebook by the Wildlife Board.

(b) No boundary extension or buffer zones on public land will be applied to private lands only permits.

(c) Private lands only permits are sold over the counter or online after the division's antlerless big game drawing is finalized.

(d) "Private lands" means, for purposes of this subsection, any land owned in fee by an individual or legal entity, excluding:

(i) land owned by the state or federal government;

(ii) land owned by a county or municipality;

(iii) land owned by an Indian tribe;

(iv) land enrolled in a Cooperative Wildlife Management Unit under R657-37; and

(v) land where public access for big game hunting has been secured.

### **R657-5-34. Buck Pronghorn Hunts.**

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule

R657-42-9(2).

(4) A buck pronghorn permit allows a person to take one buck pronghorn within the area, during the season, and using the weapon type specified on the permit, except on a pronghorn cooperative wildlife management unit located within a limited entry unit.

**R657-5-35. Doe Pronghorn Hunts.**

(1)(a) To hunt doe pronghorn, a hunter must obtain a doe pronghorn permit.

(b) A person may obtain only one doe pronghorn permit or a two-doe pronghorn permit through the division's antlerless big game drawing.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe pronghorn permit allows a person to take two doe pronghorn using the weapon type, within the area, and during the season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt doe pronghorn on any pronghorn cooperative wildlife management unit unless that person obtains an antlerless pronghorn permit for that specific cooperative wildlife management unit.

(3) A person who has obtained a doe pronghorn permit may not hunt pronghorn during any other pronghorn hunt or obtain any other pronghorn permit.

**R657-5-36. Antlerless Moose Hunts.**

(1) To hunt antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt antlerless moose on a moose cooperative wildlife management unit unless that person obtains an antlerless moose permit for that specific cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt moose during any other moose hunt or obtain any other moose permit.

**R657-5-37. Bull Moose Hunts.**

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, excluding any moose cooperative wildlife management unit located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

**R657-5-38. Bison Hunts.**

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A cow bison permit allows a person to take one cow bison using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

**R657-5-39. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.**

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or

unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

#### **R657-5-40. Rocky Mountain Goat Hunts.**

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

#### **R657-5-41. Depredation Hunter Pool Permits.**

(1) When big game are causing damage or are considered a nuisance, control hunts not listed in the guidebook of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) For the purpose of this section, nuisance is defined as a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

#### **R657-5-42. Carcass Importation.**

(1) It is unlawful to import dead elk, moose, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife

management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer, elk, or moose diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, moose, mule deer, or white-tailed deer or its parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, moose, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer, elk, or moose processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

#### **R657-5-43. Chronic Wasting Disease - Infected Animals.**

(1) Any person who under the authority of a permit issued by the division legally takes a deer, elk, or moose that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the guidebook of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

#### **R657-5-44. Management Bull Elk Hunt.**

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the guidebook of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed pursuant to R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management bull elk permit holders may take one

management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

#### **R657-5-45. General Any Weapon Buck Deer and Bull Elk Combination Hunt.**

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the guidebook of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-27, and

(b) antlerless elk, as provided in Subsection R657-5-33.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

#### **R657-5-46. Management Buck Deer Hunt.**

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the 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.

(2) Management buck deer permits shall be distributed

pursuant to rule R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management buck deer permit holders may take one management buck deer during the season, on the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-28(4).

#### **KEY: wildlife, game laws, big game seasons**

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**23-16-5**

**23-16-6**

**R657. Natural Resources, Wildlife Resources.****R657-9. Taking Waterfowl, Wilson's 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, Wilson's 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, Wilson's 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, Wilson's 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's Lake, Timpie Springs; or

(d) on the Scott M. Matheson or Utah Lake wetland preserve.

**R657-9-9. Use of Weapons on State Waterfowl Management Areas.**

(1) A person may not discharge a firearm, crossbow, or archery tackle on the 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's Lake, Timpie Springs and Topaz Waterfowl Management areas during any time of the year, except:

- (a) the use of authorized weapons as provided in Utah Admin. Code R657-9-7 during waterfowl hunting seasons for lawful hunting activities;
- (b) as otherwise authorized by the Division in special use permit, certificate of registration, administrative rule, proclamation, or order of the Wildlife Board; or
- (c) for lawful purposes of self-defense.

**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's 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, Wilson's 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, Wilson's 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;
- (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.

#### **R657-9-29. 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, Wilson's snipe and coot.

(2) A youth duck hunting day may be allowed for any person 17 years of age or younger on July 31st of the year in which the youth hunting day is held, as provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

#### **R657-9-30. Rest Areas and No Shooting Areas.**

(1) A person may only access and use state waterfowl management areas in accordance with state and federal law, state administrative code, and proclamations of the Wildlife Board.

(2)(a) The division may establish portions of state waterfowl management areas as "rest areas" for wildlife that are closed to the public and trespass of any kind is prohibited.

(b) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are designated as rest areas:

- (i) That portion of Clear Lake Waterfowl Management Area known as Spring Lake;
- (ii) That portion of Desert Lake Waterfowl Management Area known as Desert Lake;
- (iii) That portion of Public Shooting Grounds Waterfowl Management Area that lies above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake";
- (iv) That portion of Salt Creek Waterfowl Management Area known as "Rest Lake"; and
- (v) That portion of Farmington Bay Waterfowl Management Area that lies in the northwest quarter of unit one.

(d) Maps of all rest areas will be available at division offices, on the division's website, and to the extent necessary, marked with signage at each rest area.

(3)(a) The division may establish portions of state waterfowl management areas as "No Shooting Areas" where the discharge of weapons for the purposes of hunting is prohibited.

(b) No Shooting Areas remain open to the public for other lawful activities.

(c) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are No Shooting Areas:

- (i) Within 600 feet of the north and south side of the center

line of Antelope Island causeway;

(ii) Within 600 feet of all structures found at Brown's Park Waterfowl Management Area;

(iii) The following portions of Farmington Bay Waterfowl Management Area:

(A) within 600 feet of the Headquarters and Learning Center area; and

(B) within 600 feet of dikes and roads accessible by motorized vehicles;

(iv) Within 600 feet of the headquarters area of Ogden Bay Waterfowl Management Area;

(v) Within the boundaries of all State Parks except those designated open by appropriate signage as provided in Rule R651-614-4;

(vi) Within 1/3 of a mile of the Great Salt Lake Marina;

(xi) Below the high water mark of Gunnison Bend Reservoir and its inflow upstream to the Southerland Bridge, Millard County;

(xii) All property within the boundary of the Salt Lake International Airport; and

(xii) All property within the boundaries of federal migratory bird refuges, unless hunting waterfowl specifically authorized by the federal government.

(4) The division reserves the right to manage division lands and regulate their use consistent with Utah Code Section 23-21-7 and Utah Administrative Code R657-28.

#### **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, Wilson's snipe, and coot are provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's 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, Wilson's 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, Wilson's snipe and coot, or register online at the address published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's 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)(e) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit, and Doug Miller 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**

**February 8, 2016**

**23-14-18**

**Notice of Continuation August 16, 2011**

**23-14-19**

**50 CFR part 20**

**R657. Natural Resources, Wildlife Resources.****R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.****R657-37-1. Purpose and Authority.**

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management Units organized for the hunting of big game or turkey.

(2) Cooperative Wildlife Management Units are established to:

- (a) increase wildlife resources;
- (b) provide income to landowners;
- (c) provide the general public access to private and public lands for hunting big game or turkey within a Cooperative Wildlife Management Unit;
- (d) create satisfying hunting opportunities;
- (e) provide adequate protection to landowners who open their lands for hunting; and
- (f) provide landowners an incentive to manage lands to protect and sustain wildlife habitat and benefit wildlife.

**R657-37-2. Definitions.**

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "CWMU" means Cooperative Wildlife Management Unit.

(b) "CWMU agent" means a person appointed by a landowner association member to protect private property within the CWMU.

(c) "General public" means all persons except landowner association members and their spouse or dependent children.

(d) "Landowner association" means a landowner or group of landowners of private land organized as a single entity for the purpose of applying for, becoming and operating a CWMU.

(e) "Landowner association member" means:

(i) an individual landowner or the managing members of a legal entity holding a fee interest in private property enrolled in a CWMU;

(ii) a landowner association president; and

(iii) a landowner association operator.

(f) "Landowner association operator" means a person designated by the landowner association to operate the CWMU and handle day-to-day interactions of the landowner association with the public.

(g) "Landowner association president" means a representative of the landowner association who is responsible for all internal operations of the landowner association and is ultimately responsible for the CWMU.

(h) "Voucher" means a document issued by the division to a landowner association member, allowing a landowner association member to designate who may purchase a CWMU big game or turkey hunting permit from a division office.

**R657-37-3. Requirements for the Establishment of a Cooperative Wildlife Management Unit.**

(1)(a) The minimum allowable acreage for a CWMU is 10,000 contiguous acres, except as provided in Subsection (3).

(b) Land parcels that adjoin corner-to-corner shall not be considered contiguous for the purpose of meeting minimum acreage requirements for CWMUs except as specifically authorized by the Wildlife Board pursuant to Subsection (3)(b) and R657-37-6.

(c) The land comprising Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, shall not be included as part of any big game or turkey CWMU.

(d) No land parcel shall be included in more than one CWMU.

(e) Separate hunt boundaries by species on a CWMU are not permitted.

(f) For the purpose of issuing a certificate of registration under R657-37-5, public lands cannot be used to attain minimum acreages.

(g) All lands included within a CWMU shall provide quality hunting opportunity in order to qualify towards minimum acreage requirements.

(2) The Wildlife Board may approve a new CWMU having at least 10,000 contiguous acres, provided:

(a) the property is capable of independently maintaining the presence of the respective species and harboring them during the period of hunting;

(b) the property is capable of accommodating the anticipated number of hunters and providing a reasonable hunting opportunity;

(c) the property exhibits enforceable boundaries clearly identifiable to both the public and private hunters; and

(d) the CWMU contributes to meeting division wildlife management objectives.

(3)(a) The Wildlife Board may approve a new CWMU for deer, pronghorn or turkey that is at least 5,000 contiguous acres provided that it otherwise satisfies the requirements of Subsections (1) and (2).

(b) The Wildlife Board may approve a new CWMU for deer, pronghorn, elk or moose that fails to meet the acreage or parcel configuration requirements in Subsection (1), provided:

(i) the applicant submits a written request for special considerations to the CWMU Advisory Committee by February 1st prior to the annual August 1st application deadline;

(ii) upon receipt of a request for special considerations, the CWMU Advisory Committee will immediately forward the request to the division for review and recommendations;

(iii) the division will review the request for special considerations and make recommendations to the CWMU Advisory Committee within 60 days of receipt; and

(iv) the CWMU Advisory Committee will consider the request for special considerations and the division's recommendations, and make recommendations to the Wildlife Board on the advisability of granting the CWMU application.

(4)(a) Cooperative Wildlife Management Units organized for hunting big game or turkey shall consist of private land to the extent practicable.

(b) The Wildlife Board may approve a CWMU containing public land only if:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) the public land is necessary to establish an enforceable boundary clearly identifiable to both the general public and public and private permit holders; or

(iii) the public land is necessary to achieve statewide and unit management objectives.

(c) If any public land is included within a CWMU, the landowner association must meet applicable federal and state land use requirements on the public land.

(d) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportion of public lands to private lands within the CWMU pursuant to Subsection R657-37-4(3)(a)(iv).

(5) The intent is to establish CWMUs consisting of blocks of land that function well as hunting units. The Wildlife Board may deny a CWMU that meets technical requirements but does not constitute a good hunting unit.

**R657-37-4. Cooperative Wildlife Management Unit Management Plan.**

(1)(a) The landowner association must manage the CWMU in compliance with a CWMU Management Plan consistent with statewide and unit management objectives for

the respective big game or turkey management unit and approved by the Wildlife Board.

(2)(a) The CWMU Management Plan may be approved by the Wildlife Board for a period of three years and is incorporated into the CWMU's certificate of registration.

(b) Amendments to the CWMU Management Plan may be requested by the Wildlife Board, the division or the CWMU landowner association member or operator and may result in an amendment to the certificate of registration, consistent with R657-37-5.5.

(3)(a) The CWMU Management Plan must include:

(i) species management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game or turkey management unit;

(ii) antlerless harvest objectives;

(iii)(A) dates that the general public with buck or bull CWMU permits will be allowed to hunt in accordance with R657-37-7(3)(a); and

(B) a detailed explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5;

(iv) a clear explanation of the purpose for including public land within the CWMU boundaries, if public land is included;

(v) an explanation of how the public is compensated by the CWMU when public land is included;

(vi) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(vii) County Recorder Plat Maps or equivalent maps, dated by receipt of purchase within 30 days of the initial or renewal application deadline for a certificate of registration, depicting boundaries and ownership for all property within the CWMU;

(viii) two original 1:100,000 USGS maps, which must be filed in the appropriate regional division office and the Salt Lake office, depicting all interior and exterior boundaries of the proposed CWMU;

(ix) strategies and methods that avoid adverse impacts to adjacent landowners resulting from the operation of the CWMU, including the provisions provided in Section R657-37-7(6); and

(x) any request for reciprocal agreements.

(b) The division shall, review all CWMU Management Plans and make recommendations to the Wildlife Board.

(4)(a) CWMU operators are required to complete a CWMU training session provided by the division on an annual basis.

(b) Failure to complete the CWMU training session may result in the CWMU operator being referred to the CWMU Advisory Committee described in R657-37-15 or may result in administrative action taken against a certificate of registration as described in R657-37-14.

#### **R657-37-5. Application for Certificate of Registration.**

(1)(a) An application for a CWMU certificate of registration that doesn't include special considerations identified in R657-37-3(3)(b) must be completed and returned to the regional division office where the proposed CWMU is located no later than August 1.

(b) An application including special considerations described in R657-37-3(3)(b) must be submitted to the CWMU Advisory Committee by February 1.

(2) The application must be accompanied by:

(a) the CWMU Management Plan as described in R657-37-4(3), including all maps;

(b)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU landowner association;

(c) the name of the landowner association operator;

(d) the name of the landowner association president; and

(e) the nonrefundable handling fee.

(3)(a) The division may reject any application that is incomplete or completed incorrectly.

(b) Applicants must update the division regarding any changes to the substance of their application while it is under consideration or it may be considered incomplete or incorrect.

(4) The division shall forward the complete and correct application, required documentation, and any recommendation provided by the CWMU Advisory Committee to the Regional Advisory Councils and Wildlife Board for consideration.

(5) Upon receiving the application and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration, for three years, allowing the landowner association member to operate a CWMU; or

(b) deny the application and provide the landowner association with reasons for the decision.

(6) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code and any information provided by the division, landowners, and the public in determining whether to authorize the issuance of a certificate of registration for a CWMU.

(7) A certificate of registration is issued on a three year basis and shall expire on January 31.

(8) The CWMU application and the management plan agreement are binding upon the landowner association members and all successors in interest to the CWMU property or the hunting rights thereon as it pertains to allowing public permit holders reasonable access to all CWMU property during the applicable hunting seasons for purposes of filling the permit.

#### **R657-37-5a. Amendment to a Certificate of Registration; Termination of Certificate of Registration.**

(1)(a) A CWMU must notify the division in writing regarding any requested change in:

(i) permit numbers or allocation;

(ii) season dates;

(iii) landowner association membership;

(iv) acreage of the CWMU;

(v) operator;

(vi) the CWMU Management Plan; or

(vii) any other matter related to the management and operation of the CWMU not originally included in the certificate of registration.

(b) Written notification of a requested change must be submitted to the appropriate regional division office where the CWMU is located.

(c) The division must be notified of all changes in landowner association membership, acreage, and operator within 30 days of such changes occurring.

(d) Changes in the CWMU described in R657-37-5.5(1)(a) require an amendment to the certificate of registration.

(2) Requests to amend buck and bull permit numbers, permit allocation, or season dates:

(a) may be initiated by the CWMU or the division;

(b) are due on August 1 of the year prior to when hunting is to occur; and

(c) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration; and

(d) upon approval by the Wildlife Board, an amendment to the original certificate of registration shall be issued in writing.

(3) Requests to amend antlerless permit numbers:

(a) may be initiated by the CWMU or the division;

(b) must be submitted to the division by the last day of

February;

(c) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration; and

(d) upon approval by the Wildlife Board, an amendment to the original certificate of registration may be issued in writing.

(4)(a) If acreage totals in the CWMU decrease by more than 33% or landowner membership within a landowner association changes by more than 33% over the term of the certificate of registration, the certificate of registration shall:

(i) remain effective for the hunting season beginning in that calendar year; and

(ii) following completion of that hunting season, the certificate of registration shall terminate.

(b) A CWMU whose certificate of registration is terminated under this section may reapply consistent with R657-37-5.

(c)(i) If a reduction in acreage occurs on a CWMU that does not trigger the 33% threshold identified in subsection 4(a) and the resulting acreage total is below the standard totals generally required by R657-37-3, the CWMU will be reported to the CWMU Advisory Committee for review and recommendation to the Wildlife Board for action.

(ii) Review by the CWMU Advisory Committee and subsequent action by the Wildlife Board shall be taken consistent with R657-37-15.

(5)(a) All other requests for amendments shall be reviewed by the division.

(b) If the division recommends approval of the amendment, the division will submit that recommendation to the director.

(c) Upon approval by the director, an amendment to the original certificate of registration shall be issued in writing.

#### **R657-37-6. Renewal of a Certificate of Registration.**

(1)(a) At the end of a certificate of registration term, the certificate of registration may be renewed, consistent with this section.

(b) A certificate of registration terminated pursuant to R657-37-5.5 or R657-37-14 is not eligible for renewal.

(2)(a) An application for renewal of a certificate of registration that does not require special considerations identified in R657-37-3(b) must be completed and returned to the regional division office where the CWMU is established no later than August 1 of the year preceeding the expiration of the certificate of registration term.

(b) An application for renewal of a certificate of registration requiring an exception to the minimum acreage requirements or parcel configurations identified in R657-37-3(b) must be submitted to the CWMU Advisory Committee by February 1 of the year preceeding the expiration of the certificate of registration term.

(3) The renewal application must identify all changes from the previous certificate of registration and CWMU Management Plan.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan as described in Section R657-37-4(3); and

(b) all maps as described in Section R657-37-4(3) if the CWMU boundaries have changed; and

(c)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU agent or landowner association

operator;

(d) the name of the designated landowner association operator; and

(e) the nonrefundable handling fee.

(6) The division may reject any application that is incomplete or completed incorrectly.

(7) The division shall consider:

(a) the contents of the renewal application;

(b) the previous performance of the CWMU, including the actions of all landowner association members; and

(c) any violation by a landowner association member of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(8) After evaluating a complete renewal application, the division shall:

(a) recommend approving renewal of the certificate of registration and forward the permit recommendations to the Regional Advisory Councils and Wildlife Board; or

(b) recommend denying the renewal certificate of registration and state the reasons for denial in writing to the applicant; and

(i) forward the application, reason for denial and recommendation to the Regional Advisory Councils and Wildlife Board; and

(ii) provide the applicant with information for seeking Wildlife Board review of the denial.

(9)(a) Upon receiving the division's recommendation as provided in Subsection (6), the Wildlife Board may consider:

(i) the contents of the renewal application;

(ii) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration;

(iii) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU;

(iv) any recommendation provided by the CWMU Advisory Committee if the landowner association has been referred to the CWMU Advisory Committee during the renewal process; and

(v) the recommendation by the division.

(b) The Wildlife Board may renew a certificate of registration for a CWMU that does not meet minimum acreage requirements and includes land parcels that adjoin corner-to-corner or containing noncontiguous parcels, provided:

(i) the CWMU legally possessed a CWMU certificate of registration during the previous year that allowed for corner-to-corner land parcels or noncontiguous land parcels; and

(ii) the CWMU's renewal application does not add additional corner-to-corner or noncontiguous parcels from the previously approved CWMU certificate of registration.

(10) A certificate of registration for renewal is authorized for three years and shall expire on January 31, providing the certificate of registration is not revoked, suspended, or terminated prior to the expiration date.

#### **R657-37-7. Operation by Landowner Association.**

(1)(a) A CWMU must be operated by a landowner association who is represented by a president or a landowner association operator.

(b) A landowner association president or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association president, or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association member or landowner

association operator may enter into reciprocal agreements with other landowner association members or landowner association operators to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-4(3) (a)(x).

(b) Reciprocal hunting agreements may be approved only to:

(i) raise funds to address joint habitat improvement projects;

(ii) address emergency situations limiting hunting opportunity on a CWMU;

(iii) raise funds to aid in essential management practices for the benefit of CWMU species, including obtaining age or species population data as recommended by regional division personnel and approved by the division's wildlife section chief; or

(iv) or be used with unused vouchers as provided in R657-37-9(12)(a).

(c) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator and written authorization from the division must be in the person's possession while hunting.

(3)(a) A landowner association member or landowner association operator must provide general public CWMU permittees a minimum of:

(i) five days to hunt with buck, bull or turkey permits; and

(ii) three days to hunt with antlerless permits.

(b) Sunday hunt days may not be included in minimum hunt days except by mutual agreement of the permittee and the operator.

(b) General public CWMU permittees shall be allowed to hunt the entire CWMU except areas that are excluded from hunting to all permittees.

(i) a landowner association may identify in the management plan areas within the CWMU boundary that are open to specific species only. These areas must be open to all permit holders for that species.

(c) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4)(a) Each landowner association member or landowner association operator must:

(i) clearly post all boundaries of the CWMU at all corners, fishing streams crossing property lines, road, gates, and rights-of-way entering the land with signs that are a minimum of 8 1/2 by 11 inches on a bright yellow background with black lettering, and that contain the language provided in Subsection (b); and

(ii) if a CWMU uses public land for the purpose of making a definable boundary for the CWMU then that boundary shall be posted every three hundred yards.

(b) A CWMU is created under an agreement between private landowners and the division, and approved by the Wildlife Board. Only persons with a valid CWMU permit for the CWMU may hunt moose, deer, elk, pronghorn or turkey within the boundaries of the CWMU. The general public may use accessible public land portions of the CWMU for all legal purposes, other than hunting big game or turkey for which the CWMU is authorized.

(5) A landowner association member or landowner association operator must provide a written copy of its guidelines used to regulate a permit holder's conduct as a guest on the CWMU to each permit holder.

(6)(a) A CWMU and the division shall cooperatively address the needs of landowners who are negatively impacted by big game animals or turkeys associated with the CWMU.

(b) The CWMU and the division shall cooperatively seek methods to prevent or mitigate agricultural depredation caused by big game animals or turkeys associated with the CWMU.

#### **R657-37-8. Cooperative Wildlife Management Unit Agents.**

(1) A landowner association member may appoint a CWMU agent to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent must wear or have in possession a form of identification prescribed by the Wildlife Board which indicates the agent is a CWMU agent.

(3) A CWMU agent may refuse entry to or remove from a CWMU any person who:

(a) does not possess a valid CWMU permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged property within a CWMU;

(d) fails or has failed to comply with reasonable rules of a landowner association; or

(e) does not have the legal right to be on lands within a CWMU.

(4) A CWMU agent may not refuse entry to the general public onto any public land within the boundaries of a CWMU that is otherwise accessible to the public for purposes other than hunting big game or turkey for which the CWMU is authorized.

(5) In performing the functions described in this section, a CWMU agent must comply with the relevant laws of this state.

#### **R657-37-9. Permit Allocation.**

(1) The division shall issue CWMU permits for hunting big game or turkey to permittees:

(a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or

(b) named by the landowner association member or landowner association operator.

(2) CWMU landowner association members and their spouses and dependent children cannot apply for CWMU permits specific to their CWMU that are offered in the public drawing.

(3) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(4) The division and the landowner association member must, in accordance with Subsection (4), determine:

(a) the total number of permits to be issued for the CWMU; and

(b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(2)(c).

(5)(a) Big game permits may be allocated using an option from:

(i) table one for moose and pronghorn; or

(ii) table two for elk and deer.

(b)(i) Over the term of the certificate of registration, and at all times during the its term, at least 40% of the total permits for bull moose and at least 60% of the antlerless moose permits will be allocated to the public and distributed via the public drawing.

(ii) Notwithstanding subsection (b)(i) above and Tables 1 and 2, if the proportion of permits allocated to the public over consecutive certificate of registration terms substantially deviates from that identified in subsection (b)(i), the Wildlife Board may approve a modified permit distribution scheme that fairly allocates public and private permits.

(c) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(d) Permits shall not be issued for spike bull elk.

(e) Turkey permits shall be allocated in a ratio of fifty percent to the CWMU and fifty percent to the general public, with the public receiving the extra permit when there is an odd number of total permits.

TABLE 1

MOOSE AND PRONGHORN		
Cooperative Wildlife Management Option	Bucks/Bulls	Unit's Share Does/Antlerless
1	60%	40%
Public's Share		
Option	Bucks/Bulls	Does/Antlerless
1	40%	60%

TABLE 2

ELK AND DEER		
Cooperative Wildlife Management Option	Bucks/Bulls	Unit's Share Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%
Public's Share		
Option	Bucks/Bulls	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%

(6)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under subsection R657-37-4(3)(a)(ii).

(b) Failure to meet antlerless harvest objectives based on a three year average may result in discipline under section R657-37-14.

(7) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings, except as provided in Section 23-23-11.

(8) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, depredation, and other mitigating factors.

(9) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(10) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(11)(a) If a landowner association has a CWMU voucher that is not redeemed during the previous year, a landowner association may donate that voucher to a 501(c)(3) tax exempt organization, provided the following conditions are satisfied:

(i) The voucher donation is approved by the director prior to transfer;

(ii) No more than one voucher is donated per year by a landowner association;

(iii) The voucher is donated for a charitable cause, and the landowner association does not receive compensation or consideration of any kind other than tax benefit; and

(iv) The recipient of the voucher is identified prior to obtaining the director's approval for the donation.

(b) A CWMU voucher approved for donation under this section may be extended no more than one year.

(c) The division must be notified in writing and the donation completed before May 1st the year the CWMU voucher is to be redeemed.

(d) vouchers may be used in reciprocal hunting agreements described in accordance with R657-7-(2)(b).

(12)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for taking big game or turkey. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

**R657-37-10. Permit Cost.**

The fee for permits allocated to any CWMU is the same as the applicable:

- (a) limited entry permit fee for elk and pronghorn;
- (b) general season, limited entry or premium limited entry permit fee for deer or turkey; and
- (c) once-in-a-lifetime permit fee for moose.

**R657-37-11. Possession of Permits and License by Hunters - Restrictions.**

(1) A person may not hunt in a CWMU without having in his possession:

- (a) a valid CWMU permit; and
  - (b) the necessary hunting licenses, permits and tags.
- (2) A CWMU permit:
- (a) entitles the holder to hunt only on the CWMU specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-7(2)(a); and
  - (b) constitutes written permission for trespass as required under Section 23-20-14.

(3) Prior to hunting on a CWMU each permittee must:

- (a) contact the relevant landowner association member or landowner association operator and request the CWMU rules and requirements; and
- (b) make arrangements with the landowner association member or landowner association operator for the hunt.

**R657-37-12. Season Lengths.**

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) an archery buck deer season may be established beginning with the opening of the general archery deer season through August 31 and during the sixty-one consecutive day buck deer season;

(b) an archery bull elk season may be established beginning with the opening of the general archery elk season through October 31 and during a bull elk season variance;

(c) an archery buck pronghorn season may be established beginning with the opening of the statewide limited entry archery buck pronghorn season through October 31;

(d) general season bull elk, buck pronghorn, and moose seasons may be established September 1 through October 31, or the closing date of the general season for the respective species, whichever is later;

(e)(i) general buck deer seasons may be established for no longer than sixty-one consecutive days from September 1 through November 10;

(ii) a landowner association member or landowner association operator electing to establish buck deer hunting in November must:

- (A) meet the CWMU management plan objectives;

(B) not exceed average hunter density exhibited on the surrounding deer wildlife management units;

(C) provide positive hunter satisfaction; and

(D) maintain a harvest success rate at least equal to the surrounding deer wildlife management units;

(E) designate the CWMU's sixty-one consecutive day season in the application, or if the sixty-one day consecutive season is not designated the season shall begin September 1;

(F) allow all public hunters the option to hunt in November;

(f) muzzleloader bull elk seasons may be established September 1 through the end of the general muzzleloader elk season and during a bull elk season variance;

(g) antlerless elk seasons may be established August 1 through January 31;

(h) antlerless deer seasons may be established August 1 through December 31;

(i) doe pronghorn seasons may be established August 1 through October 31, unless August 1 falls on a Sunday, in which case the season shall start on the following Monday; and

(j) turkey seasons may be established the second Saturday in April through May 31.

(2) The Wildlife Board may authorize bull elk hunting season variances only if the CWMU landowner association member or landowner association operator clearly demonstrates that November hunting is necessary on the CWMU.

(3) Notwithstanding the season length provisions in this section, any season described in Subsection (1) that begins on a Sunday will default to and commence the Saturday before.

#### **R657-37-13. Rights-of-Way.**

A landowner association member may not restrict established public access to public land enclosed by the CWMU.

#### **R657-37-14. Violations.**

(1) The Wildlife Board may refuse to issue, renew, or amend a certificate of registration to an applicant, or may revoke, restrict, place on probation, change permits or allocations or otherwise act upon a certificate of registration where the landowner association member has:

(a) violated any provision of this rule, the Wildlife Resources Code, the certificate of registration, or the CWMU Management Plan; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CWMU operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CWMU.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

#### **R657-37-15. Cooperative Wildlife Management Unit Advisory Committee.**

(1) A CWMU Advisory Committee shall be created consisting of eight members nominated by the director and approved by the Wildlife Board.

(2) The committee shall include:

(a) two sportsmen representatives;

(b) two CWMU representatives;

(c) one agricultural representative;

(d) one at-large public representative;

(e) one elected official; and

(f) one Regional Advisory Council chairperson or Regional Advisory Council member.

(3) The committee shall be chaired by the Wildlife Section

Chief, who shall be a non-voting member.

(4) The committee shall:

(a) hear complaints dealing with fair and equitable treatment of hunters on CWMUs;

(b) review the operation of the CWMU program;

(c) review failure to meet antlerless objectives;

(d) hear complaints from adjacent landowners;

(e) review changes in acreage totals for CWMUs that are under standard minimum acreage or parcel configuration requirements and evaluate the appropriateness of their continued participation in the program; and

(f) make advisory recommendations to the director and Wildlife Board on the matters in Subsections (a), (b), (c), (d), and (e).

(5) The Wildlife Section Chief shall determine the agenda, and time and location of the meetings.

(6) The director shall set staggered terms of appointment of members in order to assure that all committee members' terms shall expire after four years, and at least three members shall expire after the initial two years.

**KEY: wildlife, cooperative wildlife management unit  
February 8, 2016**

**23-23-3**

**Notice of Continuation May 6, 2013**

**R657. Natural Resources, Wildlife Resources.****R657-63. Self Defense Against Wild Animals.****R657-63-1. Purpose and Authority.**

(1) The purpose of this rule is to define conditions and circumstances under which a person is legally justified in killing or seriously wounding a threatening or attacking wildlife animal.

(2) This rule is established and promulgated by the Wildlife Board under authority of Sections 23-14-18 and 23-14-19.

**R657-63-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Wild animal" means, for purposes of this rule, an individual animal that falls under the definition of "protected wildlife" as defined in Section 23-13-2.

(b) "Enter" means to physically penetrate the interior space of a structure with any part of the body, whether or not the exterior surface of the structure is ruptured.

**R657-63-3. Self Defense.**

(1) A person is legally justified in killing or seriously injuring a threatening wild animal when the person reasonably believes such action is necessary to protect them self, another person, or a domestic animal against an imminent attack by the wild animal that will likely result in severe bodily injury or death to the victim.

(2)(a) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:

(i) the nature of the danger;

(ii) the immediacy of the danger;

(iii) the probability that the threatening wild animal will attack;

(iv) the probability that the attack will result in death or serious bodily injury;

(v) the ability to safely avoid the danger;

(vi) the fault of the person in creating the encounter; and

(vii) any previous pattern of aggressive or threatening behavior by the individual wild animal which was known to the person claiming self defense.

(b) Notwithstanding Subsection (2)(a), a person who is legally located or traveling in a place where attacked or approached by a threatening wild animal is not required to retreat.

(c) In all cases involving a reasonably plausible assertion of self defense, it is presumed the life and safety of a human being is paramount to the life or safety of a wild animal.

(3)(a) A person shall notify the division within 12 hours after killing or wounding a wild animal under Subsection (1).

(b) No wild animal killed pursuant to Subsection (1) or the parts thereof may be removed from the site, repositioned, retained, sold, or transferred without written authorization from the division.

(4)(a) A person is not legally justified in killing or seriously injuring a threatening wild animal under the circumstances specified in Subsection (1) if the person intentionally, knowingly, or recklessly provokes or attracts the wild animal into a situation in which it is probable it will threaten the person, another person, or a domestic animal. (b) Notwithstanding Subsection (4)(a), a person lawfully pursuing a cougar or bear with dogs may seriously injure or kill that cougar or bear when they reasonably believe such action is necessary to protect them self or another person against an imminent attack that will likely result in severe bodily injury or death.

(5) A person that kills or seriously injures a wild animal that enters a home, tent, camper, or other permanent or temporary living structure occupied by a person is presumed to have acted reasonably and had a reasonable fear the wild

animal's entry presented an imminent threat of severe bodily injury or death to an occupant of the structure, provided the intruding wild animal is:

(a) reasonably perceived as an animal physically capable of causing severe bodily injury or death to a human being; and

(b) killed or injured while attempting to enter, entering, or occupying the involved structure.

**R657-63-4. Violations.**

A person that kills or seriously injures a wild animal without legal justification as provided in this rule and otherwise in violation of the law shall be subject to criminal prosecution under this Title and the rules and proclamations of the Wildlife Board.

**KEY: wildlife****November 10, 2015****Notice of Continuation February 29, 2016****23-14-18****23-14-19**



**R661. Navajo Trust Fund, Trustees.****R661-1. Utah Navajo Trust Fund Scope.****R661-1-1. Scope.**

These rules are adopted pursuant to Subsection 51-10-205(4)(a), and shall be interpreted so as to be consistent with the Navajo Trust Fund Act. These rules shall govern the Board of Trustees, the Trust Administrator, the Trust staff, the Dine' Advisory Committee, as well as all beneficiaries of the Utah Navajo Trust Fund.

**KEY: Utah Navajo Trust Fund (UNTF), Board of Trustees,  
Dine' Advisory Committee  
February 29, 2016**

**51-10**

**R661. Navajo Trust Fund, Trustees.****R661-2. Utah Navajo Trust Fund Definitions.****R661-2-1. Definitions.**

(1) "Act" means the Navajo Trust Fund Act, Utah Code Annotated Title 51 Chapter 10.

(2) "Board of Trustees" means the Board of Trustees of the Utah Navajo Trust Fund created by Utah Code Ann. Section 51-10-202.

(3) "Chapter" means a chapter of the Navajo Nation; with regards to the UNTF, it also means the Blue Mountain Dine' Community.

(4) "College" means any college, university, technical school, or an institution of higher learning after high school (post-secondary) level.

(5) "Dine' Advisory Committee" means the committee established pursuant to Utah Code Ann. Section 51-10-206.

(6) "Financial Assistance" means UNTF financial assistance.

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

(8) "UNTF" means the Utah Navajo Trust Fund created by Utah Code Ann. Section 51-10-201.

(9) "UNTF employee" means a person who is not a UNTF officer who is employed on a full-time, part-time, or contract basis by UNTF.

(10) "UNTF officer" means members of the Board of Directors and the UNTF Administrator appointed pursuant to Utah Code Ann. Section 51-10-202, 203, and 204.

**KEY: definitions, Utah Navajo Trust Fund (UNTF), chapter, Dine' Advisory Committee  
February 29, 2016**

**51-10**

**R661. Navajo Trust Fund, Trustees.****R661-3. Utah Navajo Trust Fund Residency Policy.****R661-3-101. Eligibility.**

(1) To be eligible for program services from the Utah Navajo Trust Fund, a person must be a Navajo residing in San Juan County, Utah, as required by Public Law 90-306 adopted by Congress on May 17, 1968.

(2) To be considered "a Navajo" for purposes of this policy, a person shall meet the standards adopted by the Navajo Nation Council for membership in the Tribe, and provide proof thereof in the form of a Navajo Nation Certificate of Indian Blood ("CIB")

(3) To be considered a resident of San Juan County, Utah, an individual must provide:

(a) A resolution from a Utah Navajo Chapter, including the Blue Mountain Dine' Community, that the individual is a San Juan County, Utah resident. The Chapter shall obtain documentation in support of a claim of San Juan County, Utah residency such as:

(i) A San Juan County, Utah voter registration;

(ii) Utility bills for three consecutive years preceding residency determination,

(iii) Verification of house location by GPS,

(iv) San Juan County, Utah, School District records;

(v) A homesite lease, or,

(vi) Utah Drivers License

(b) Utah on-Reservation residents who are aboriginal Navajos (meaning descendants of original or earliest known inhabitants of the Utah Portion of the Navajo Reservation) and their dependents (as defined by the U.S. Internal Revenue Code) are considered to be residents eligible for UNTF programs. Each Chapter shall establish a Residency Committee to identify Aboriginal Navajos and their dependents.

(c) Off-Reservation Utah residents and their dependents (as defined by the U.S. Internal Revenue Code) shall have a principal place of residence in San Juan County, Utah, for at least five (5) years immediately preceding the date of application for any UNTF program services, and shall have the present intention to continue residency in San Juan County, Utah, permanently or for the indefinite future.

(i) A person's "principal place of residence" is where the person's habitation is fixed and to which, whenever he/she is absent, he/she has the intention of returning daily for at least nine (9) months of the year. A person's habitation shall mean the physical location of his/her own home or the home of the parents or legal guardians, with whom the person resides.

(ii) A person does not become a resident merely because:

(A) he/she is present in San Juan County, Utah; or,

(B) he/she is in San Juan County, Utah temporarily with no intent to make San Juan County, Utah, his/her home.

(d) Upon establishing proof of marriage, a non-San Juan County, Utah spouse shall be deemed a resident qualified to apply for UNTF program services to the extent that his/her spouse qualifies and the couple maintains residency in San Juan County, Utah. Documentation proving marriage includes:

(i) a marriage certificate; or,

(ii) a Navajo Nation Affidavit of Marriage for traditional Navajo marriages; or,

(iii) a Navajo Nation common law marriage certificate.

(e) Adopted children acquire the resident status of their adoptive parents as of the date the decree of adoption is signed and the parents meet the required residency criteria.

(4) An applicant's residency shall be verified by a sworn statement by the applicant that he/she meets the residency standards required herein and shall be certified by Chapter officials of the Utah Chapter where the applicant resides.

**R661-3-201. Challenges to Residency.**

(1) An applicant's claim of residency may be challenged by

any Utah Navajo Chapter official by filing a claim with the Utah Dine' Advisory Committee. The claim shall list with specificity the evidence why the applicant does not meet the residency requirement.

(2) In cases where a person's residency is in dispute, information contained in the population database used and maintained by UNTF in allocating resources between Chapters shall be provided to the Dine' Advisory Committee.

(3) After giving the applicant and the Chapter officer notice and an opportunity to be heard and/or an opportunity to submit written responses, the Dine' Advisory Committee shall determine whether the applicant meets the residency requirements. The decision of the Dine' Advisory Committee is final.

(4) If a person is determined to have been ineligible after he/she has benefited or received a UNTF program service, the person shall be obligated to reimburse UNTF for the cost of such services.

**R661-3-301. Additional Documentation.**

(1) The Trust Administrator may require additional documentation to meet residency criteria.

**KEY: residency, San Juan County, Utah Navajo Trust Fund (UNTF), chapter resolution  
February 29, 2016**

**51-10**

**R661. Navajo Trust Fund, Trustees.****R661-4. Utah Navajo Trust Fund Chapter Projects.****R661-4-101. Intent.**

(1) Intent of this program is to assist Chapters in meeting the needs of their local community by improving living conditions and responding to general welfare concerns.

(2) It is the Chapter's responsibility to set priorities regarding the development they wish to pursue given the amount of funding they can mobilize.

(a) Chapter projects require some, if not all, of the following elements: planning, site selection and assessments, proper clearances, architectural design and engineering, contract management, and completion of a development project. Additionally, project planning shall include reasonable timeframes and phased budgeting.

(b) Chapters are encouraged to employ long-term planning, including community planning and project specific planning, to anticipate future development needs in their communities.

(c) Chapters shall use a decision process that incorporates community knowledge, experience, and participation.

(3) Chapter projects must serve people determined to be in the greatest need by the Chapter, based on its annual priorities and/or community development planning and must take into consideration:

(a) Individuals 55 years of age or older currently living in hogans and wanting a home without utility services are top priority;

(b) Individuals that are handicapped and meet the IHS and Navajo Nation guidelines for utility and water access assistance.

(c) Low Income families in accordance with State, Federal and Navajo Nation guidelines. "Low income" also means "no income".

(d) Applicants that have not been assisted by the Chapter's Housing Assistance program.

(e) Veterans who have served in military service and are obtaining assistance through Navajo Nation, Federal, or state programs for home construction purposes.

(f) Chapter Officials, Dine' Advisory Committee Representatives, or immediate relatives may have to access to UNTF benefits, as long as they are legitimately in the highest priority need and if the State of Utah and Navajo Nation tribal ethics policies are complied with in accordance with UCA Section 51-10-206(5)(b). In such situations, the Chapter Official or Dine' Advisory Committee Representative will refrain from voting on issues which directly or indirectly may affect them.

(g) Applicants shall designate, in writing, an individual who will be responsible for the property in the event of applicant's death or incapacitation.

(4) UNTF funding shall only be provided to match funding from other sources. A commitment letter must be provided with the proposal to evidence that another agency has committed funding.

**R661-4-201. General Policies.**

(1) Chapters are required to bid out purchases based on a competitive process pursuant to the State of Utah procurement statutes and rules. At least two bids must be received by the Chapter for evaluation and award of a construction.

(2) All Utah Chapters submitting proposals for Chapter project funding must attach a list of constituents to be served. Only those residents residing in San Juan County, Utah and listed on the UNTF Census shall be considered eligible.

(3) UNTF will periodically review projects, budgets, and balances with Chapter staff and at least one Chapter officer, together with the Dine' Advisory Committee, to determine a Chapter's plans for projects and completion schedules.

(4) UNTF will conduct monitoring visits either on a

periodic basis, from time to time, on a random basis, or as needs dictate.

**R661-4-301. Application Process.**

(1) Completed Chapter proposals must be submitted to the UNTF Administrative office at least five (5) working days prior to the regular monthly Dine' Advisory Committee. If a deadline falls on a holiday, the proposals will be due the business day before the holiday.

(a) Chapters must coordinate with IHS, NTUA, and other service providers to ensure utility plans and match funding are in place.

(b) If requested by the Chapter or other funding entities participating in the Project, UNTF may provide technical assistance for Chapter projects.

(2) Chapter project proposals shall include the following:

(a) Project Description;

(b) Project Scope including identification and quantification of beneficiaries;

(c) Match-funding agencies' roles and expectations;

(d) Description of how project will be achieved, including any manpower needs;

(e) Project Budget indicating estimated amounts; and,

(f) A final executed Chapter Resolution containing needed in compliance with the Navajo Nation policy on Chapter resolution requirements.

(3) The completed proposal is presented to the Dine' Advisory Committee for review and recommendation to the UNTF Board.

(a) If the proposal is incomplete, the proposal will be returned to the originating Chapter for resubmission when complete.

(b) If the proposal receives an approval through Committee and Board action in a duly-called meeting, the proposal will be funded.

(c) A written report on the progress on all projects must be submitted by the Chapter to the UNTF Board and Dine' Advisory Committee at their regularly-scheduled meetings.

**R661-4-401. Disbursement of Funds.**

(1) The sponsoring Chapter or entity shall provide UNTF with a complete copy of any and all executed contracts for UNTF funded projects. UNTF will not disburse any payments until it receives a copy of the written and executed contract.

(2) UNTF match-funding disbursements

(a) UNTF will make arrangements with co-funding agencies regarding payment requests and drawdown procedures.

(b) If the funding sources agree, a payment request procedure that complies with the State of Utah's accounting process will be used.

(c) The Chapter must submit payment request documents with appropriate signatures.

(3) All payments will be sent directly to the contractor or servicing organization.

(a) UNTF payments must be requested through the standard State of Utah accounting process. Payments shall only be made according to the terms of contract and UNTF procedures.

(b) Chapters requesting reimbursements must provide copies of canceled checks, front and back, and any and all receipts which support the claim request.

(4) The Chapter or sponsoring organization shall:

(a) Provide UNTF with a monthly written activity update on the first day of each month. Reports shall include at a minimum:

(i) a financial update on how funds are being used; and,

(ii) a progress report, including photos, of the project.

(b) Provide UNTF with a Construction Schedule and Schedule of Values for the project.

(i) The Construction Schedule shall be updated monthly to indicate percentage of completion of the Project.

(ii) The Schedule of Values is a breakdown of the different phases of the total project and dollar value of each phase of the project.

(c) Provide a close-out report to UNTF when project funds have been fully expended or the Project is complete, whichever occurs first.

(5) Use of UNTF funds:

(a) Allowed expenditures include:

(i) Project labor, material purchases, equipment rental, professional and technical assistance (for architects, engineers, contractors, surveyors, etc.) or other items needed to complete a project.

(ii) Office equipment is an allowable expenditure in accordance with the UNTF Office Equipment Purchase and Repair Program in the UNTF policies.

(iii) The Blue Mountain Dine' Community (BMDC) may use a portion of their Chapter Project allocation for selective administrative expenses as provided by BMDC policies.

(b) Non-allowed expenditures include administrative expenses such as: Chapter salaries, per diem and travel and/or mileage, utilities, insurance, food, cleaning supplies and office expenses, etc.

**R661-4-501. Program Effectiveness Metric.**

(1) Percentage of Chapter Projects commenced within two (2) years of UNTF funding.

(2) If it is the opinion of UNTF staff that insufficient progress has been made on an approved Chapter Project within two (2) years of the approval date, UNTF staff will meet with the Chapter staff and Chapter Officials to determine if the funding authorization should be rescinded. UNTF Staff shall recommend to the UNTF Board whether approved funding should or should not be rescinded.

**KEY: chapter projects, community needs, Utah Navajo Trust Fund (UNTF)  
February 29, 2016**

**51-10**

**R661. Navajo Trust Fund, Trustees.****R661-5. Utah Navajo Trust Fund Blue Mountain Dine' Community.****R661-5-101. Project Funding Policy.**

(1) The Blue Mountain Dine' Community ("BMDC") receives annual Chapter projects allocation from UNTF based on population data.

(a) BMDC is required to adopt an annual budget and submit it to UNTF for approval prior to obtaining UNTF funds. BMDC administrative expenses shall come from its annual Chapter projects allocation.

(b) For project specific budget allocations, a detailed project proposal must be submitted to UNTF describing how funds will be used.

**R661-5-201. Funding Priorities.**

(1) BMDC adopts the priorities provided for in Rule R661-4. In addition to priorities provided for in Rule R661-4, the BMDC Board of Directors will recommend applicants in the greatest need for assistance and recommend funding amounts.

(2) The priority system provided for in Rule R661-4 may also be used in determining other needs like water hauling, firewood hauling, electric powerline projects, water/sewer line projects, and other community development projects.

**KEY: Blue Mountain Dine', chapter, Utah Navajo Trust Fund (UNTF)**

**February 29, 2016**

**51-10**

**R661. Navajo Trust Fund, Trustees.****R661-6. Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program.****R661-6-101. Objective.**

(1) The Higher Education Financial Assistance Scholarship Program ("the Program") includes both the UNTF Higher Education Scholarship Fund and the UNTF Endowment Fund. The objective of the Program is to assist San Juan County, Utah, Navajo college students with scholarships by matching other college financial assistance or funding sources.

(2) UNTF higher education scholarship funding is available to eligible San Juan County, Utah, Navajo students for studies at institutions of their choice.

(3) The UNTF Endowment Education Fund was established in 1994 to provide college financial assistance to eligible San Juan County, Utah, Navajo College students attending college in San Juan County, Utah, such as Utah State University-Eastern-Blanding Campus. The Endowment Fund was established as a result of a special U. S. Dept. of Education grant which brought together five contributors/partners: UNTF, USU-Eastern, Ute Mountain Tribe, Calvin Black Foundation, and a U.S. Government grant regarding Native American education.

(a) UNTF continues to participate in the Endowment Fund even though the scheduled twenty (20) year period maturity occurred in 2014 due to the good growth of the Fund.

(b) Funds from the Endowment Fund yearly allocation must be exhausted before regular UNTF funds are utilized. The Endowment Fund allocation to UNTF is based on the Endowment's previous year's earnings from investment.

**R661-6-201. Definitions.**

(1) "College" means any college, university, technical school, or institution of higher learning after high school (post-secondary) level.

(2) "Financial Assistance" means UNTF financial assistance for college expenses.

(3) "Academic Term" means the period of time that the college uses to begin and end educational sessions such as a semester, quarter, term, etc.

**R661-6-301. Eligibility.**

(1) Applicants must meet the UNTF residency requirement every two years.

(a) The residency requirement may have to be renewed more often than two years if a name change or record change becomes essential.

(b) The Applicants' Chapter shall require a Certificate of Indian Blood (CIB) for its records in order to establish proof of enrollment with the Navajo tribe and chapter membership as a San Juan County, Utah Navajo resident.

(2) The applicant must be enrolled in at least six (6) credit hours of approved college courses during the regular academic term. Course work must apply towards an approved degree or certificate program from an accredited post-secondary institution.

(a) Repeated and/or audited courses will not be funded by UNTF. If a student changes majors and has to retake lower level courses, only one transition academic term will be paid by UNTF.

(b) The eligible San Juan County, Utah Navajo College student must maintain a 2.0 grade point average on a 4.0 grade point scale. UNTF has the discretion to provide incremental scholarship bonuses to students who obtain a GPA greater than 2.0

(i) Grades from the previous academic term shall be submitted to UNTF following the completed academic term.

(ii) Awards are made on a first-come, first-served basis.

(c) If a student's GPA falls below 2.0, UNTF will provide

a warning letter to the student and place the student on probation. If a student's GPA is below 2.0 for two consecutive semesters, the student will be ineligible for any further UNTF assistance unless the student is able to bring their GPA to 2.0 or above using their own resources or non-UNTF resources.

(3) San Juan County, Utah, Navajo Students are eligible for UNTF assistance in obtaining a One-year or two-year Certificate, Associates, Baccalaureate, Masters, or Doctorate degree.

(a) Eligible San Juan County, Utah, Navajo College Students shall declare a major in a given field no later than two (2) years after commencement of higher level education so that proper counseling and academic advice can be provided

(b) Only one bachelor's degree will be funded by UNTF, unless the second degree is closely related to the first degree and if the same prerequisite general education classes can be used.

(c) The limit for Associates Degree is 75 credit hours and 145 credit hours for a Bachelors Degree.

(d) A "degree contract" must be agreed upon between the college and the student and submitted to UNTF to receive funding. A "degree contract" is a list of core of classes required to obtain a degree.

(4) Graduate students must submit a letter of acceptance and be eligible for UNTF Scholarship, and must carry the minimum graduate studies requirement of the College. An exception will be made if the course work is one of a special requirement for the professional track and/or tenure such as a special license or certification.

(5) High School Concurrent Enrollment Program students must meet the eligibility criteria regarding all requirements for the UNTF Higher Education Scholarship and Financial Assistance Program with the following modifications:

(a) Applicant shall provide a letter of recommendation from his/her high school counselor or school officials for concurrent enrollment program participation. The letter should address the student's ability to meet the demands of concurrent enrollment.

(b) Students must maintain at least a 3.0 grade point average (GPA) in their high school studies to be eligible for this program.

(c) The maximum amount of UNTF assistance available annually is determined by the UNTF Board. The UNTF assistance can be increased by the UNTF Board of Directors based on the Utah colleges cost data that is maintained by the State of Utah-Department of Education.

(6) On-line or correspondence courses may be taken as long as earned credits are applied to a degree program or a recognized certification program under UNTF funding guidelines.

(a) All UNTF Higher Education Scholarship eligibility requirements must be met by the applicant before any assistance toward the on-line/correspondence courses will be approved.

(b) Students attending on-line/correspondence courses shall be eligible for UNTF funding if enrolled in at least three (3) credit hours of approved college course work.

**R661-6-401. Funding.**

(1) UNTF is not a primary funding source, UNTF funds are supplemental to other scholarship and financial aid resources. UNTF will fund a student based on credit hours. The maximum amount of funding available per academic term is determined by the UNTF Board.

(2) The amount of funding afforded to each eligible San Juan County, Utah, Navajo College student per academic term is determined by the number of credit hours and a financial needs analysis. The award amount per credit-hour-group will be determined by UNTF as part of each year's annual budget.

(a) Academic workload incentive: Incremental scholarship amounts shall be awarded based on the workload

taken; following credit/unit incremental groups of: 6 to 8; 9 to 11; and 12 hours, or over per academic term.

(i) Should a student drop a class which results in dropping the student to the next lower incremental group, the student's funding for the next academic term shall be assessed a decreased funding adjustment, unless a refund is properly made by the student.

(ii) In order to qualify for the "workload incentive", first-time students must submit a course registration list by mail, e-mail, or telefax to the UNTF Higher Education Office.

(ii) In order to facilitate the UNTF award on a timely basis toward the student's next academic term with respect to the "workload incentive", the student must submit a list of the courses from pre-registration to the UNTF Education Specialist. The information will help determine the actual award amount based on the number of hours or credit units to be carried in the next academic term.

(b) Financial Needs Analysis

(i) Applicants must file a FAFSA Grant application with the U.S. Department of Education in order to determine their financial aid needs from UNTF.

(ii) It is the responsibility of the institution's Student Financial Aid Office to complete the needs analysis, and to request an award from UNTF based upon the determined need. When the financial needs determination is completed, the student must complete a UNTF financial assistance application which can be obtained from the UNTF Higher Education Scholarship.

(iii) Upon completion of the needs analysis by the Office of Student Financial Aid, the UNTF Education Specialist will evaluate the level of financial assistance requested, matching resources, and make the appropriate award amount.

(iv) Students with a "No Need" determination (as determined by the educational institution) may be awarded UNTF funding if the financial aid officer at the institution determines the parents cannot or are unwilling to provide the family contribution to meet the student's need as determined by the federal financial aid application analysis.

(A) The UNTF "No Need" contribution amount is limited to the Expected Family Contribution (EFC amount) however, the maximum limits will be no more than 75% of the normal scholarship award amounts.

(B) If financial assistance calculates out at less than \$40.00 for "No Need" it will not be awarded

(C) The EFC amount is determined by the Federal Student Aid program, an office of the U.S. Department of Education, when a student applies to the FAFSA (Free Application for Financial Student Aid) program.

(v) If the student does not qualify for FAFSA and the EFC cannot be determined; and if the student is otherwise eligible for UNTF assistance an \$800.00 grant amount may be awarded for the last academic term prior to graduation for a bachelor's degree or higher degree.

(3) All student applicants must also apply to the Navajo Nation Office of Scholarship and Financial Assistance (ONNSFA). UNTF coordinates with ONNSFA to exchange information regarding match funding with UNTF and other acquired resource funds. All Student applicants to the UNTF funds must sign the UNTF Consent Form that authorizes UNTF to contact ONNSFA to verify funding verification.

(4) The UNTF Education Specialist will process the required and appropriate funding documentation to the UNTF Financial Manager for funding disbursement. The UNTF Financial Manager shall maintain accounts, historical and concurrent, of all UNTF-funded students for proper record keeping and reporting. UNTF check(s) will be mailed to the institution's Student Financial Aid Office. No payment(s) will be made directly to a student.

(5) All Post-Graduate students must abide by appropriate

application procedures in accordance with post-graduate study program requirements. Supplemental funding from other sources is a major requirement in participating in the graduate-studies program, including program funds from the Office of Navajo Nation Scholarship and Financial Aid (ONNSFA). Other considerations regarding special studies as applied to the undergraduate program also apply.

(6) UNTF Higher Education Scholarship funds may not be used to pay loans, including education loans; purchase(s) of personal belongings not directly associated with higher education studies; encumbrances from previous year's college/university attendance; and other expenses for which the funds are not intended.

(a) Students withdrawing from classes are required to refund the UNTF awards for that academic term. UNTF reserves the right to adjust awards for any refund amounts that were not paid.

(b) The penalty for misspent or misused UNTF scholarship funds will include placing the student on ineligible status for a one (1) year period. The student may re-establish his/her eligibility for UNTF funding by successfully completing a full academic year without the financial assistance of UNTF.

(c) Misuse or false acquisition of scholarship or emergency assistance funds by the student shall be subject to repayment to UNTF Higher Education Scholarship Program via standard collection procedures, which may include legal action.

#### **R661-6-501. Application Schedule and Requirements.**

(1) The UNTF Higher Education Scholarship Program observes and follows a funding schedule compatible with Federal, State, Tribal, and private agencies. Students must carefully observe these schedules to allow for the most timely funding application consideration, especially application deadline dates. Matching funds are critical and essential, since UNTF funding is supplemental.

(2) Students should observe the institution's academic year schedule and early funding application submittal to UNTF to ensure proper funding review and consideration.

#### **R661-6-601. Student Recipient Obligations.**

(1) UNTF-funded students must maintain acceptable academic progress in conformance with academic standards set by UNTF and the participating institutions. UNTF requires the funded student to maintain a minimum grade point average (GPA) of 2.0 to be eligible for continued funding consideration.

(2) Official transcripts shall be provided to UNTF at the commencement of the each fall academic term.

(a) If a student fails to provide an official transcript, UNTF funds will be discontinued.

(b) A student's failure to provide required funding documents is not grounds for grievance action on the part of the student.

(3) In order to receive UNTF Funding the Student shall execute all necessary documentation required by the College to permit the College to release the Student's official transcript and degree information to UNTF.

#### **R661-6-701. Program Effectiveness Metrics.**

(1) Scholarship recipient progress shall be tracked by UNTF staff.

(2) UNTF staff shall report to the UNTF Board:

(a) When a recipient completes a certificate or degree program; and

(b) The time it took the recipient to complete the program.

#### **R661-6-801. Grievance and Appeal Procedures.**

(1) Grievance and Appeals Procedures: A student applicant may file a grievance with the UNTF Education Specialist if the student disagrees with the decision rendered



regarding his/her funding.

(a) The written grievance shall be submitted to the Education Specialist within fourteen (14) calendar days from the date the adverse decision was mailed to the student.

(b) The written grievance statement must contain a justification for re-consideration of the Education Specialist's decision, including attachment of documents which may support such justification.

(2) The Education Specialist shall report receipt of the written grievance to the UNTF Financial Manager for review. The UNTF Financial Manager shall make a determination regarding the substance of the grievance within ten (10) calendar days of receipt of the written grievance.

(a) If the grievant is dissatisfied with the Financial Manager's decision, an appeal may be filed with UNTF.

(i) To appeal the decision of the UNTF Financial Manager, an applicant may submit a written request for a hearing to the UNTF Scholarship Appellate Committee within ten (10) calendar days via the Education Specialist.

(A) The Applicant must include a written justification statement setting forth with specificity the reason(s) why the decisions made by the Higher Education Specialist and the Financial Manager should be reversed.

(B) The Applicant shall include copies of all documentation supporting the justification identified in the Applicant's statement.

(ii) The Appellate Committee must commence a hearing with within fourteen (14) calendar days of the receipt of the request.

(iii) The student shall be notified in writing by certified mail seven (7) calendar days prior to the hearing.

(iv) A decision by the Appellate Committee shall be rendered within (15) calendar days after the Committee hearing.

(3) Appellate Committee

(a) The Appellate Committee is comprised of: 1) two members of the UNTF Dine' Advisory Committee, 2) the UNTF Administrator, 3) a college student, and 4) a representative from another state agency or institution of higher learning.

(b) The Appellate Committee may choose not to hear a case if the grieving party has not submitted a justification in writing with appropriate and necessary supportive documentation.

(4) Appellate Committee Hearing Procedures

(a) Attorneys, court advocates, or any type of legal representation are not allowed in the Appellate Committee Hearing. Family members or other persons are not allowed in the Committee Hearing. The attendees of the hearing will consist of the Appellate Committee members, the UNTF Education Specialist, and the Applicant (Grievant).

(b) A letter will be sent to the UNTF Education Specialist and the Student/Grievant of the Appellate Committee's decision on the matter. This will be the final decision and final step of the UNTF Appeal and Grievance process.

**KEY: scholarships, endowment fund, college, Utah Navajo Trust Fund (UNTF)  
February 29, 2016**

51-10

**R661. Navajo Trust Fund, Trustees.****R661-7. Utah Navajo Trust Fund Housing Projects Policy.****R661-7-101. Requesting UNTF Housing Assistance.**

(1) Individuals requesting UNTF housing assistance must apply to their respective Chapter and follow the Chapter's procedures for application, required documents, and prioritization. All requests, budget preparation, updates and progress reports will be processed initially through the Chapter.

(a) The requesting Chapter or organization has the primary responsibility to identify clients most in need of housing assistance and shall provide written confirmation that the applicant has not received funding to construct a new home from UNTF, Navajo Royalties Holding Fund, other housing agencies or funding source within the past 20 years.

(b) Chapters are required to maintain housing assistance policies and procedures and submit a copy of the policy to UNTF once every three (3) years, and when updated or amended.

(i) The Chapter policy should include a prioritization system in accordance with the Navajo Housing Services Department numbering system. If not already provided for in the Navajo Housing Services Department numbering system, disabled, elderly and veteran applicants shall be considered first on the housing priority assistance list.

(ii) The Chapter shall have a housing application review committee.

(c) The Chapter must submit an approved resolution along with the Housing priority list that supports the request.

(d) Applicants must meet UNTF residency criteria.

**R661-7-201. Types of Housing Assistance.**

(1) New House construction from footing to exterior and interior finish.

(2) Completion of construction on houses that were started but not completed.

(3) Additions of a room(s) such as a bedroom, bathroom, or kitchen.

(4) Remodel or Renovation includes:

(a) Renovation or retrofit to accommodate clients for handicapped accessibility, including but not limited to, additions/expansion for large bathrooms, walk-in, roll-in showers, widening of hallways and doorways, expansion of stoop or deck size, exterior ramps leading up to doorways.

(b) Improvement of an existing structure such as roof repair, floor installation or replacement.

(c) Weatherization measures, including replacement of broken windows or dilapidated doors, and installation of draft-proof windows, sealant, chalking, weather stripping, etc.

(d) Renovation of trailers or modular/manufactured homes, including the stabilization of the foundation with appropriate skirting and/or masonry foundation.

(e) Installation of house wiring, indoor plumbing, plumbing fixtures, kitchen cabinetry.

(f) Financial assistance for housing located off reservation land in San Juan County, Utah, is limited to renovation. The applicant must provide proof of ownership of the property.

**R661-7-301. Housing Assistance Not Available.**

(1) To fund the purchase of trailers or modular/manufactured housing units. (2) For down payment assistance or closing costs are not eligible for UNTF funding.

(3) For mortgage funding or payoff

(4) For any type of loan payoffs.

(5) For purchase of appliances such as a refrigerator, range, or microwave oven.

**R661-7-401. Housing Assistance Eligible Purchases.**

(1) Water heaters if waterline is available and water is about to be turned on or, if the water heater is electric, electricity

is functional.

(2) Wood and/or coal stove, stove pad, stove pipe, and through the roof stove pipe kit.

(3) One ceiling fan for distribution of heat.

(4) UNTF staff will determine if the materials proposed to be purchased are reasonably priced quality building materials.

(a) A client who desires a more expensive item than what is approved by UNTF staff must purchase that item using their own funds. UNTF will not pay client the difference between the UNTF staff approved item and the item client desires to purchase.

(b) If the client does not purchase the item in time for construction crew installation the client must to install the item at their own cost.

**R661-7-501. Required Documentation for Housing Projects.**

(1) A Navajo Nation Homesite Lease will be required of all new house construction and construction completion projects.

(2) For other types of Housing Assistance applicants are strongly encouraged to have a homesite lease available for proof of ownership, utilities and other services.

(3) Matching fund agencies shall be identified and commitment letters from each agency shall be included in the proposal package.

(4) Applicants must provide documentation naming a successor owner/lessee who is permitted to occupy the residence and is obligated to maintain the property.

(5) All new construction must be based on a floor plan showing all components of the dwelling unit to be constructed. Additionally, a specific list of all materials to be used and an estimate of total man-hours for construction is required.

(6) Proof of the applicants contribution towards the construction, addition, or renovation of a dwelling in the form of receipts for the purchase of cement as well as proof of purchase of adequate waterproof material for protection from moisture damage to the bags of cement purchased.

**R661-7-601. Purchases Shall Be Made on Separate Invoices for Separate Applicants.**

Building materials shall not be purchased and delivered at commencement of construction.

(1) Purchases and deliveries of materials shall be completed in phases according to the following schedule.

Phase 1: Foundation materials for footing, stem wall, piers, rebar, anchor bolts, and redwood or treated lumber

Phase 2: House Shell materials for framing, trusses, OSB plywood, siding, roofing, vents

Phase 3: Exterior Doors and Windows

Phase 4: Rough-in House wiring and Plumbing

Phase 5: Insulation and Drywall

Phase 6: Flooring

Phase 7: Finish Carpentry: Cabinets, Casing and Baseboard, Exterior trim, Soffit, Interior and Exterior Painting

Phase 8: Finish House wiring and Plumbing

(2) Purchases for Stoops, Steps, or Decks can be performed at any point after Phase 1.

(3) All documentation must be submitted to the Chapter

(a) Requests for payment must include all materials receipts as well as verification signed by the homeowner, chapter representative, or UNTF representative picking up the items or signing for the delivery.

(b) The person signing the receipt shall deliver the receipt to the Chapter and/or UNTF office and shall safeguard materials from theft or damage.

(c) Upon receipt of material verification forms by the UNTF Administration, invoices will be processed for payment directly to the vendor.

**R661-7-701. Funding.**

(1) UNTF preference is to fund projects is on a reimbursement basis. However, in exceptional circumstances the UNTF Administrator has the authority to make advance disbursements up to Five Thousand Dollars (\$5,000.00) for mobilization expenses.

(2) UNTF will disburse approved funding directly to Chapters, or identified and approved contractors and/or vendors.

(3) The Chapter or UNTF will retain ten percent (10%) of the approved contractor billings until proof of completion of the housing project is provided to UNTF.

(4) The Chapter shall provide UNTF staff with an annual report identifying percentage of project completion and an explanation of what remains to be completed.

**KEY: housing, chapter, Utah Navajo Trust Fund (UNTF), eligible purchases  
February 29, 2016**

**51-10**

**R661. Navajo Trust Fund, Trustees.****R661-8. Utah Navajo Trust Fund Power Lines and House Wiring Program.****R661-8-101. Objective.**

(1) Objective of the Power Lines and House wiring program is to provide financial assistance to individuals and entities for development of power line main trunk lines or extensions, and/or house wiring projects.

(2) UNTF match funding will be limited to 50% of the project cost or \$400,000, whichever is lower if the project is entirely in the State of Utah. If any power line project extends into other states, UNTF will provide match-funding only for the prorated portion located in Utah.

(3) House wiring work must conform to the requirements of the edition of the National Electrical Code current at the time the wiring work is to be performed.

**R661-8-201. Applicants.**

Applicants shall work directly with their Chapter to apply for financial assistance.

(1) All requests, budget preparation, updates and progress reports, will be initially processed through the Chapter.

(2) Power line/house wiring projects will follow the regular chapter project guidelines.

**R661-8-301. Documentation Required.**

(1) Power Lines: Main Lines or Extensions

(a) Explanation from power line company regarding feasibility, routing, and preliminary cost information.

(b) Project description, including identification of each phase of the work to be completed and which organization/contractor will be responsible for certain tasks.

(i) A map of the proposed route of the power line shall be included.

(ii) An explanation of the total number of families or individuals that will benefit from the power line distribution and extensions.

(c) Proof that the utility company or a private consultant that Rights-of-Way (ROW) are have been or will be obtained for the project. If a consultant is used for the ROW work, at least two (2) quotations from consultants shall be received.

(d) All appropriate clearances for the specified areas to be served from Navajo Nation and Bureau of Indian Affairs; submission of a letter from all applicable agencies verifying required clearances have been obtained is required.

(e) Identification of all match-funding sources with their scope of responsibility and contribution.

(f) A Resolution from the Chapter, with a final client listing and a current estimate shall be submitted in support of the request.

(1) Individual house wiring Applications require:

(a) At least two (2) quotes from qualified, licensed electricians specifying the cost associated with installing house wiring.

(b) Proof of licensing, bonding, insurance and warranty for all Contractors or sub-contractors hired by the Chapter to install house wiring.

(c) A project description that includes a listing of the dwelling units included in the proposed project and the detailed cost of each dwelling unit installation.

**R661-8-401. Retainage.**

(1) Ten percent (10%) of UNTF funding shall be retained until final inspection and approval of the work performed.

**R661-8-501. Program Effectiveness Metrics.**

(1) The Chapter shall submit documentation that each home to be serviced under the UNTF program has been inspected and determined in compliance with Navajo Tribal

Utility Authority (NTUA) or Rocky Mountain Power (RMP) electrical specifications.

(2) The percentage of power line projects physically completed within three (3) years of UNTF commitment of funds

(3) The percentage of individual house wiring projects completed within 12 months of UNTF commitment of funds.

**KEY: power lines, electrical wiring, Utah Navajo Trust Fund (UNTF)**

**February 29, 2016**

**51-10**

**R698. Public Safety, Administration.****R698-8. Local Public Safety and Firefighter Surviving Spouse Trust Fund.****R698-8-1. Purpose.**

The purpose of this rule is to establish procedures for implementation of the Public Safety Officer and Firefighter Line-of-Duty Death Act.

**R698-8-2. Authority.**

This rule is authorized by Section 53-17-301.

**R698-8-3. Definitions.**

(1) The terms used in this rule are defined in Section 53-17-102.

(2) In addition:

(a) "department" means the Utah Department of Public Safety; and

(b) "participating agency" means an employer defined in Section 53-17-102 that has elected to participate in the trust fund.

**R698-8-4. Participation Process.**

(1) An employer that elects to participate in the trust fund shall submit a cost sharing agreement form approved by the board no later than June 30, 2017.

(2) The cost sharing agreement shall be addressed to the Commissioner's office of the Department of Public Safety, Attn. Trust Fund and shall contain the following:

(a) the name, address and phone number of the employer;

(b) the name and title of each member to be included for reimbursement from the trust fund;

(c) the name, mailing address and signature of the agency administrator completing the cost sharing agreement form; and

(d) the required annual premium amount as determined by the board.

**R698-8-5. Annual Payment of Premiums.**

(1) A participating agency shall continue to submit annual premium payments to the department in order to continue to participate in the trust fund.

(2) Annual premium payments shall be submitted to the department no later than January 31st of each year.

(3) If a participating agency fails to submit a premium payment as required in this subsection, the department shall notify the agency administrator who completed the cost sharing agreement of the delinquency in premium payments.

(4) If after receipt of a delinquency notice the participating agency fails to submit the annual premium payment within 30 days of the date of the notice, the department shall:

(a) notify the agency administrator who completed the cost sharing agreement that the employer is no longer considered to be a participant in the trust fund; and

(b) include in the notice the total amount of premiums paid by the employer into the trust fund.

**R698-8-5. Change of Employment Status of a Member or Agency Administrator.**

(1) In the event of a change of employment status of a member or the agency administrator, the agency administrator shall submit notice to the department on a form approved by the board.

**R698-8-6. Reimbursement of Health Coverage Costs.**

(1) In the event of a line-of-duty death of a member, a participating agency may receive reimbursement for payment of health coverage premiums and contributions made to a health savings account as described in Section 53-17-201.

(2) To receive reimbursement for payments described in Subsection (1), the participating agency shall submit to the

department:

(a) a request for reimbursement on a form approved by the board upon initial request; and

(b) a copy of the statement provided by the group health plan that includes the participating agency's costs for coverage upon initial request and each month thereafter.

(3) The request for reimbursement form shall include:

(a) the name of the spouse for whom coverage is provided; and

(b) the name and date of birth for each child under the age of 26 for whom coverage is provided.

(4) If the member did not have a living spouse at the time of death, the request for reimbursement form shall include the name and date of birth for each child under the age of 26 for whom coverage is provided.

**R698-8-7. Discontinuation of Reimbursement of Health Coverage Costs.**

(1) In the event of the death of a spouse or child for whom coverage is provided under Section 53-17-201, the participating agency shall submit to the department:

(a) a form approved by the board that includes;

(i) the name of the spouse or child that is deceased;

(ii) the individual's date of birth; and

(iii) the date of the individual's death.

(2) Upon receipt of the form described in Subsection (1), the department shall discontinue reimbursement of health coverage costs from the trust fund for the deceased individual.

(3) If reimbursement is being paid from the trust fund for health coverage costs to an employer for a child under the age of 26, reimbursement will be automatically discontinued when the child reaches the age of 26.

**KEY: line-of-duty death, cost sharing agreement, surviving spouse trust fund  
February 24, 2016**

**53-17**

**R728. Public Safety, Peace Officer Standards and Training.**  
**R728-409. Suspension, Revocation, or Relinquishment of Certification.**

**R728-409-1. Authority.**

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

**R728-409-2. Purpose.**

The purpose of this rule is to establish procedures for the suspension, revocation, or relinquishment of a respondent's certification.

**R728-409-3. Definitions.**

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "ALJ" means an administrative law judge who conducts administrative hearings as described in Subsections 53-6-211(3) and 53-6-309(3);

(b) "On duty" means that a respondent is:

(i) actively engaged in any of the duties of the respondent's employment as a peace officer or dispatcher;

(ii) receiving compensation for activities related to the respondent's employment as a peace officer or dispatcher;

(iii) on the property of a law enforcement facility, correctional facility or dispatch center;

(iv) in a law enforcement vehicle which is located in a public place; or

(v) in a public place and is wearing a badge or uniform, authorized by the respondent's employer, which readily identifies the wearer as a peace officer or dispatcher;

(c) "Relinquish" means the permanent deprivation of the respondent's certification, to include any and all peace officer or dispatcher certifications, pursuant to Section 53-6-211.5 or 53-6-311, which precludes a respondent from:

(i) admission into a training program conducted by, or under the approval of, the division; or

(ii) reinstatement or restoration of the respondent's certification by the division;

(d) "Respondent" means a peace officer or dispatcher against whom the division has initiated an investigation or adjudicative proceeding under Sections 53-6-211 or 53-6-309;

(e) "Revocation" means the permanent deprivation of a respondent's certification, to include any and all peace officer or dispatcher certifications, which precludes a respondent from:

(i) admission into a training program conducted by, or under the approval of, the division; or

(ii) reinstatement or restoration of the respondent's certification by the division;

(f) "Sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; and

(g) "Suspension" means the temporary deprivation of a respondent's certification, to include any and all peace officer or dispatcher certifications; and,

(h) "Traffic offense" means all offenses in the following parts:

(i) 41-6a, Part 3, Traffic-Control Devices;

(ii) 41-6a, Part 6, Speed Restrictions;

(iii) 41-6a, Part 7, Driving on Right Side of Highway and

Passing;

(iv) 41-6a, Part 8, Turning and Signaling for Turns;

(v) 41-6a, Part 9, Right-of-Way;

(vi) 41-6a, Part 10, Pedestrians' Rights and Duties;

(vii) 41-6a, Part 11, Bicycles, Regulations of Operation;

(viii) 41-6a, Part 12, Railroad Trains, Railroad Grade

Crossings, and Safety Zones;

(ix) 41-6a, Part 13, School Buses and School Bus Parking Zones;

(x) 41-6a, Part 14, Stopping, Standing, and Parking;

(xi) 41-6a, Part 15, Special Vehicles;

(xii) 41-6a, Part 16, Vehicle Equipment;

(xiii) 41-6a, Part 17, Miscellaneous Rules; and

(xiv) 41-6a, Part 18, Motor Vehicle Safety Belt Usage Act.

**R728-409-4. Investigative Procedure.**

(1) The division shall initiate an investigation when it receives information from any reliable source that a violation of Subsections 53-6-211(1) or 53-6-309(1) has occurred, including when:

(a) A respondent is charged with or convicted of a crime;

(b) There is evidence a respondent has engaged in conduct which is a criminal act under law, but which has not been criminally charged or where criminal prosecution is not anticipated;

(c) A respondent's employer notifies the division that the respondent has been investigated, disciplined, terminated, retired or resigned as a result of conduct in violation of Subsections 53-6-211(1) or 53-6-309(1);

(d) A person makes a complaint regarding a violation of Subsections 53-6-211(1) or 53-6-309(1) and there is independent evidence to support the complaint;

(e) violation of Subsections 53-6-211(1) or 53-6-309(1) is reported in the media and there is independent evidence to confirm that the conduct occurred; or

(f) A background investigation indicates that a respondent has engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1).

(2) The division may not investigate conduct which is limited to:

(a) A violation of an employer's policy or procedure; or

(b) Sexual activity protected under the right of privacy recognized by the United States Supreme Court in *Lawrence v. Texas*, 539 U.S. 558 (2003).

(3) A person seeking to file a complaint against a respondent may be asked to sign a written statement, detailing the incident and swearing to the accuracy of the statement after being advised that providing a false statement may result in prosecution under Section 76-8-511, Falsification of Government Record.

(4) An investigator from the division shall be assigned to investigate the complaint and ensure that the investigation is fully documented in the investigative case file.

(5)(a) If a respondent under investigation is employed as peace officer or dispatcher, the division shall notify the respondent's employer concerning the complaint or investigation, unless the nature of the complaint would make such a course of action impractical.

(b) The division shall keep a record of the date the employer and the respondent are notified.

(6) The division shall refer any complaints of a criminal nature against a respondent to the appropriate law enforcement agency having jurisdiction over the crime for investigation and prosecution if such a referral has not already been made.

(7) If the respondent's employer has an open and active investigation, the division may wait until the employer has completed its investigation before taking action unless the division determines it is not in the public's best interest to delay the investigation.

(8) The division may use the information gathered by the respondent's employer in its investigation.

(9) The division shall take action based on the actual conduct of the respondent as determined by the division's own independent investigation, not on any findings or sanctions issued by the respondent's employer or the court.

(10) Witnesses and other evidence may be subpoenaed during an investigation pursuant to Sections 53-6-210 and 53-6-308.

(11) If ordinary investigative procedures cannot resolve the facts at issue, a respondent may be requested to submit to a polygraph examination.

(12) The director may immediately suspend a respondent's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.

(13) Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.

(14) If the division determines there is insufficient evidence to find that a respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the director shall issue a letter to the respondent indicating that the investigation has been concluded and that the division shall take no action.

#### **R728-409-5. Purpose of Adjudicative Proceedings.**

(1) The purpose of an adjudicative proceeding is to determine whether there is sufficient evidence to find that the respondent engaged in the conduct alleged in the Notice of Agency Action by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsections 53-6-211(1) or 53-6-309(1).

(2) All adjudicative proceedings initiated by the division for the purpose of suspending or revoking a respondent's certification shall be formal proceedings as provided by Section 63G-4-202.

#### **R728-409-6. Commencement of Adjudicative Proceedings - Filing of the Notice of Agency Action.**

(1) Except as provided by 63G-4-502, all adjudicative proceedings initiated by the division for the purpose of suspending or revoking a respondent's certification shall be commenced by the filing of a Notice of Agency Action.

(2) The Notice of Agency Action shall be signed by the director and comply with the requirements of Section 63G-4-201.

(3) The Notice of Agency Action shall be filed with the division and a copy sent to the respondent by certified mail.

#### **R728-409-7. Responsive Pleadings.**

(1) The respondent shall file a written response with the division, signed by the respondent or the respondent's attorney, within 30 days of the mailing date of the Notice of Agency Action.

(2) The written response shall comply with the requirements in Section 63G-4-204.

#### **R728-409-8. Hearing Waivers.**

(1) Once a Notice of Agency Action has been issued, the division shall send a hearing waiver form to the respondent.

(2) The respondent shall have 30 days from the mailing date of the Notice of Agency Action to sign a hearing waiver.

(3)(a) If the respondent does not waive the right to a hearing before the ALJ, the adjudicative proceeding will continue.

(b) The period of time in which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the respondent does not sign a hearing waiver.

(4) If the respondent signs a hearing waiver and files it with the division, the matter shall be heard at the next regularly scheduled council meeting.

#### **R728-409-9. Default.**

(1) The ALJ may enter an order of default against a respondent if:

(a) The respondent fails to file the response required in rule R728-409-7; or

(b) The respondent fails to attend or participate in the hearing.

(2) The order of default shall include a statement of the grounds for default and shall indicate that the matter will be heard at the next regularly scheduled council meeting.

(3) The order of default shall be filed with the division and a copy sent to the respondent by certified mail.

(4)(a) The respondent may seek to set aside the default order by filing a motion within 90 days from the date of the order of default as provided in Section 63G-4-209.

(b) The ALJ may set aside an order of default for good cause shown.

#### **R728-409-10. Scheduling a Hearing before the ALJ.**

(1)(a) If the division receives a responsive pleading from the respondent, a notice containing the location, date and time for the hearing shall be issued by the division.

(b) The notice of hearing shall be filed with the division and a copy sent to the respondent by certified mail.

(2) The hearing shall be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

#### **R728-409-11. Discovery and Subpoenas.**

(1)(a) In formal POST adjudicative proceedings parties may conduct only limited discovery.

(b) A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.

(2) Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding.

(3)(a) The disclosure of all discovery materials is subject to the provisions in the Government Records Access and Management Act, Section 63G-2-101 et seq.

(b) The division may charge a fee for discovery in accordance with Section 63G-2-203.

(4) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Sections 53-6-210 and 53-6-308, by the ALJ when requested by any party, or by the ALJ on his own motion pursuant to Section 63G-4-205.

#### **R728-409-12. Hearing Procedures.**

(1) All hearings shall be conducted by the ALJ in accordance with Section 63G-4-206.

(2)(a) At the hearing, the respondent has the right to be represented by an attorney.

(b) Legal counsel will not be provided to the respondent by the division and all costs associated with representation will be the sole responsibility of the respondent.

#### **R728-409-13. ALJ Decision.**

(1) Within 30 days from the date a hearing is held, the ALJ shall sign and issue a written decision, which includes a statement of:

(a) The ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

(b) The ALJ's conclusions of law; and

(c) The reasons for the ALJ's decision.

(2) If the ALJ determines there is sufficient evidence to

find that the respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the ALJ's decision shall indicate that the matter will be heard at the next regularly scheduled council meeting.

(3) If the ALJ determines there is insufficient evidence to find that the respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the matter shall be dismissed.

(4) The ALJ's decision shall be filed with the division and a copy sent to the respondent by certified mail.

**R728-409-14. Action by the Council.**

(1) If the respondent waives the right to a hearing with an ALJ, there has been an order of default, or a findings of fact is issued by the ALJ, the division shall present the matter to the council at its next regularly scheduled meeting.

(2) The division shall notify the respondent of the date, time, and location of the council meeting.

(3)(a) Prior to the council meeting, the division shall provide the council with the pleadings contained in the administrative file.

(b) The division shall also provide the council with any written information or comments provided by the respondent's employer.

(4) At the council meeting the respondent or the respondent's attorney may address the council regarding whether the respondent's certification should be suspended or revoked.

(5) The council shall review the matter and determine whether suspension or revocation of the respondent's certification is appropriate based upon the facts of the case and the POST Disciplinary Guidelines which were adopted on June 7, 2010 and amended on January 4, 2016.

**R728-409-15. Final Order.**

(1) After the council has decided the matter, the council chairperson shall issue a final order within 30 days of the council meeting.

(2) The final order shall indicate the action taken by the council with regards to the respondent's certification and shall include information on the appeal process outlined in R728-409-16.

(3) The council's action shall be effective on the date that the final order is signed by the chairperson.

(4)(a) The final order shall be filed with the division.

(b) A copy of the final order shall be sent to:

(i) the respondent by certified mail; and

(ii) the respondent's employer by regular mail, if the respondent is employed as peace officer or dispatcher.

**R728-409-16. Judicial Review.**

(1) A respondent may obtain judicial review of the council's action by filing a petition for judicial review with the Utah Court of Appeals within 30 days after the date that the final order is issued by the council chairperson.

(2) The petition must meet all requirements specified in Sections 63G-4-401 and 63G-4-403.

**R728-409-17. Relinquishment Procedures.**

(1) At any time after the division receives a complaint that a respondent has engaged in conduct described in Subsections 53-6-211(1) or 53-6-309(1), a respondent who is the subject of the complaint may voluntarily relinquish the respondent's certification by submitting a Relinquishment of Certification form to the division.

(2) The Relinquishment of Certification form must be signed by the respondent and notarized.

(3) As soon as the division receives a properly executed Relinquishment of Certification form, the respondent's certification shall be terminated and the respondent will no

longer be a certified peace officer or dispatcher.

(4) Upon the termination of the respondent's certification, the division's investigation into the complaint and any adjudicative proceedings will cease.

(5) Notice of the termination of the respondent's certification shall be provided to:

(a) The respondent;

(b) The respondent's employer if the respondent is employed as a peace officer or dispatcher; and

(6) The National Peace Officer De-Certification database administered by the International Association of Directors of Law Enforcement Standards and Training, if the respondent is a peace officer.

**R728-409-18. Reporting Violations of 53-6-211(1) or 53-6-309(1).**

(1) A chief, sheriff or administrative officer of an agency employing a certified peace officer or dispatcher who is made aware of an allegation against a certified peace officer or dispatcher employed by that agency as provided in Subsection 53-6-211(6) or 53-6-309(6) shall report the allegation to the division within 90 days if the allegation is found to be true.

(2) A chief, sheriff or administrative officer of an agency employing a certified peace officer or dispatcher who fails to report to the division within 90 days an allegation that is found to be true shall appear before the council at the next regularly scheduled council meeting to explain why the allegation was not reported.

**KEY: certifications, investigations, revocations, relinquishments**

**November 12, 2015**

**53-6-211**

**Notice of Continuation December 21, 2011**

**53-6-211.5**

**53-6-309**

**53-6-311**



**R850. School and Institutional Trust Lands, Administration.**  
**R850-50. Range Management.**  
**R850-50-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-5-102 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for the utilization of forage, the qualifications of a grazing permittee, and related improvement of range resources on trust lands.

**R850-50-150. Planning.**

1. Pursuant to Section 53C-2-201(1)(a), the issuance of grazing permits carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

2. Range improvement projects authorized pursuant to this section carry the following planning obligations beyond existing rule-based analysis and approval processes:

(a) to the extent required by the Memorandum of Understanding with the State Planning Coordinator, the agency shall submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

(b) evaluate and respond to comments received through the RDCC process.

3. Applications for modified grazing permits which do not involve surface disturbing activities are governed by paragraph 1, above. Applications for modified grazing permits which involve surface disturbing activities are subject to the planning obligations set forth in paragraph 2, above.

**R850-50-200. Grazing Management.**

1. Management of trust lands used for grazing purposes is based upon carrying capacity which permits optimum forage utilization and seeks to maintain or improve range conditions.

2. Carrying capacity shall be established after consideration of historical stocking rates, forage utilization, range condition, trend, and climatic conditions.

3. In order to fulfil its constitutional mandate to its beneficiaries, the agency may set, and change, at its discretion, season of use, duration (time) of use, and intensity of use, as well as numbers, distribution, and kind of livestock which are allowed by a grazing permit.

**R850-50-300. Applications.**

1. Grazing permit applications may be accepted on all trust lands not otherwise subject to a grazing permit unless the land has been withdrawn from grazing or has been determined to be unsuitable for grazing.

2. Trust lands may be deemed unsuitable for grazing if it is determined that:

(a) range conditions render it incapable of supporting economic grazing practices;

(b) grazing would substantially interfere with another use that is better able to provide for the support of the beneficiaries; or

(c) the agency's management costs would be excessive.

3. The determination to accept grazing permit applications is at the sole discretion of the director.

**R850-50-400. Permit Approval Process.**

1. On trust lands that are unpermitted and which are available for grazing, applications may be solicited through any method the agency determines appropriate, including notification of adjacent landowners and other permittees in an allotment.

2. On trust lands subject to an expiring grazing permit, competing applications shall be accepted from April 1 to April 30, or the next working day if either of these days is a weekend

or holiday, of the year in which the permit terminates.

(a) All expiring and canceled grazing permits shall be posted on the agency's website by January 1 of the year in which the permit expires or the year after the permit was canceled. The website notice shall include any reimbursable investment made by an existing permittee on a range improvement. Notice that expiring grazing permits may be found on the agency's website may also be published.

(b) Grazing permits issued on trust lands acquired through an exchange with the federal government (after the expiration of the federal permit) shall not be subject to the provisions of this rule for two successive 15-year terms unless the permit has been sold or otherwise terminated.

3. A person holding an expiring grazing permit shall have the right to renew the permit, provided that no competing applications are received, by submitting a completed application along with the first year's rent and other applicable fees.

4. Persons desiring to submit a competing application must do so on forms acceptable to the agency. Forms are available at the offices listed in R850-6-200(2)(b) or from the agency's website. Applications must include:

(a) a non-refundable application fee;

(b) a one-time bonus bid; and

(c) an amount determined by the agency pursuant to R850-50-1100(7), which will be required to reimburse the holder of an authorized range improvement project should the competing application be accepted.

5. Bonus bids and range improvement reimbursements shall be refunded to unsuccessful applicants. Upon establishment of the yearly rental rate, the successful applicant shall be required to submit the first year's rental and other required fees.

6. Applications shall be evaluated by the agency and may be accepted only if the agency determines that the applicant's grazing activity will not create unmanageable problems of trespass, range and resource management, or access.

(a) For purposes of this evaluation, adjoining permittees and lessees, adjoining property owners, and adjoining federal permittees may be considered acceptable as competing applicants unless specific problems are demonstrated.

(b) Applicants not meeting the requirements in (a) above, whose uses would not unreasonably conflict with the uses of other permittees in the area, may nevertheless be accepted if the size of the grazing area, the access to the grazing area, and other factors demonstrate that the applicant is able to utilize the area without adverse impact on the range resources, adjoining lands, or beneficiaries of affected trust lands.

(c) For purposes of evaluating an applicant's acceptability as a grazing permittee, the agency may consider:

(i) the applicant's ability to maintain any water rights appurtenant to the lands described in the application;

(ii) the applicant's ownership of private land in the area;

(iii) the applicant's ownership of grazing privileges in the BLM or Forest Service allotment where the trust land is located;

(iv) the type and number of livestock owned by the applicant; and

(v) management costs to the agency should the application be approved.

7. The holder of a permit which is expiring, on which a competing application has been received, shall have a preference right to permit the property provided he agrees to pay an amount equal to the highest bonus bid submitted by a competing applicant.

(a) In the event that the existing permittee fails to match the highest bonus bid, the permittee may be refunded the value of the amount the permittee contributed to the cost of any approved range improvement project at the expense of the successful bonus bid applicant.

(b) In the event that all, or a portion of, the property on

which a bonus bid was submitted is sold, exchanged, or otherwise made unavailable, the permittee shall receive the refund of a prorated amount of the bonus bid based on the AUMs lost to the use of the permittee.

**R850-50-500. AUM Assessments and Annual Adjustments.**

1. An annual assessment shall be charged for each AUM authorized by the agency. This assessment shall be established by the board and shall be reviewed annually and adjusted if appropriate.

2. The annual assessment for lands designated as "High Value Grazing Lands" will be at a higher amount than trust lands not so designated. High Value Grazing Lands are typically, but not necessarily, contained in a named land block. Blocked or scattered lands may be designated as High Value Grazing Land through a Director's Finding.

3. In the event that the agency acquires High Value Grazing Lands through an exchange with the federal government, the application of the agency's annual assessment to the holders of grazing privileges on the acquired land shall be phased in over a five-year period in equal increments after the term of the federal permit has expired.

4. The application of the agency's annual assessment on lands acquired through an exchange with the federal government, and not designated as High Value Grazing Lands, shall be phased in over a three-year period in equal increments after the term of the federal permit has expired.

5. Failure to pay the annual assessment within the time prescribed shall automatically work a forfeiture and cancellation of the permit and all rights thereunder.

**R850-50-600. Grazing Permit Terms.**

1. Grazing permits shall be issued for a maximum of 15 years and shall contain the following:

(a) terms, conditions, and provisions that shall protect the interests of the trust beneficiaries with reference to securing the payment to the agency of all amounts owed;

(b) terms, conditions, and provisions that shall protect the range resources from improper and unauthorized grazing uses; and

(c) other terms, conditions, and provisions that may be deemed necessary by the agency or board in effecting the purpose of these rules and not inconsistent with any of its provisions.

2. The agency may cancel or suspend grazing permits, in whole or in part, after 30 days' notice by certified mail to the permittee when:

(a) a violation of the terms of the permit, or of these rules, including trespass as defined in R850-50-1400, has occurred;

(b) a lease or permit has been issued for the permitted property, the purpose of which the agency has determined to be a higher and better use;

(c) the agency has disposed of the permitted property; or

(d) any management problems arise as defined in R850-50-400(6).

**R850-50-700. Reinstatements.**

Trust land on which a grazing permit has been cancelled and which is ineligible for reinstatement pursuant to R850-50-500(1)(c) may be advertised as available pursuant to R850-50-400(2). If the agency does not advertise the property, the person previously holding the permit may apply for a new permit by submitting an application and all applicable fees.

**R850-50-800. Grazing Permits--Legal Effect.**

1. A grazing permit transfers neither right, title, or interest in any lands or resources, nor any exclusive right of possession and grants only the authorized utilization of forage.

2. Locked gates on trust land, without written approval, are

prohibited. If such approval is granted, keys shall be supplied to the agency and other appropriate parties requiring access to the area as approved by the agency, including those with fire and regulatory responsibilities.

**R850-50-900. Non-Use Provisions.**

1. The granting of non-use shall be at the discretion of the agency.

2. Applications for non-use must be submitted in advance or, if the trust land is within a federal grazing allotment, as soon as notification of non-use is received from the applicable federal agency.

3. Applications for non-use must be accompanied by the application fee and by any documentation which is the basis for the request. In the event the non-use application is approved, any annual assessment paid for the year shall be applied to the permittee's next year's annual assessment.

4. Non-use shall not be approved for periods of time exceeding one year except when the director finds that a longer period of time would be in the best interests of the beneficiaries.

5. Non-use for personal convenience with no payment of the annual assessment shall not be approved.

**R850-50-1000. Assignment and Subleasing of Grazing Permits.**

1. Permittee shall not assign, or sublease, in whole or in part, or otherwise transfer, dispose of, or encumber any interest in a permit without the written consent of the agency. To do so shall automatically, and without notice, work the forfeiture and cancellation of the permit.

2. The approval of a sublease shall be subject to the following restrictions:

(a) An annual assessment equal to 50% of the difference between the base AUM assessment established under R850-50-500, and the AUM payment received by the permittee through the sublease, multiplied by the number of AUMs subleased, or a \$1.00 per AUM minimum assessment, whichever is greater, shall be charged for the approval of any sublease.

(b) Applications to sublease a grazing permit shall only be approved after a determination that the sub-lessee meets the requirements of R850-50-400(6).

(c) Sublease approvals are valid for a maximum period of five years.

3. The approval of an assignment shall be subject to the following restrictions:

(a) A determination that the assignee meets the requirements of R850-50-400(6).

(b) A payment, based on the number of AUMs transferred multiplied by \$10.00, shall be paid to the agency prior to the approval of any assignment or partial assignment. Assignments made for no consideration in money, services, or goods, to include inter vivos or testamentary assignments made to immediate family members (parents, spouse, children, grandchildren, and full siblings) and assignments from and to business entities wholly owned by an immediate family member or members, may be exempt from this additional payment. In such cases, a minimum assignment fee as listed on the Master Fee Schedule shall be assessed.

(c) For purposes of this rule, a shareholder or member of a grazing association or cooperative shall be deemed a permittee and subject to the requirements of R850-50-1000(3)(a). In order to facilitate the enforcement of this rule, each grazing association or cooperative shall submit a list of all members to the agency annually prior to June 30. This list shall include each member's contact information and the number of AUMs allowed.

4. The agency's consent to allow a mortgage agreement or collateral assignment is for the convenience of the permittee.

5. The mortgage agreement or collateral assignment shall:

(a) not exceed the remaining term of the permit; and  
 (b) contain an acknowledgment by the lender that the grazing permit is cancellable pursuant to R850-50-600(2) and R850-50-1000(1) and that the agency assumes no liability in providing such consent.

**R850-50-1100. Range Improvement Projects.**

1. Applications for range improvement projects shall be submitted for approval on appropriate forms and shall be approved or denied by the agency based on a written finding.

2. A range improvement project must be approved by the agency in writing before construction begins. Line cabins and similar structures will not be authorized as range improvement projects. They may, however, be authorized by a special use lease pursuant to R850-30.

3. Agency authorization for range improvement projects shall be valid for periods of time not to exceed two years from the date the applicant is notified of the authorization. Extensions of time may be granted only when the director finds that an extension of time would be in the best interests of the beneficiaries.

4. Range improvements constructed or placed upon trust land become the property of the agency.

5. Range improvements shall not be authorized if they would be:

(a) located on a parcel that the agency has determined has potential for sale, lease, or exchange and the possibility exists that improvements may encumber these actions;

(b) located on a parcel designated for disposal;

(c) unnecessary or uneconomical as determined by the agency; or

(d) determined by the agency to be ordinary maintenance.

6. Range improvements which are necessary to rehabilitate lands whose forage production has been diminished by poor grazing practices or poor stewardship of the permittee shall not be considered a reimbursable improvement but rather a requirement to keep the grazing permit in effect.

7. Authorized Range Improvement Projects:

(a) shall be depreciated using schedules consistent with typical schedules published by the USDA Natural Resources Conservation Service or any other depreciation schedules approved by the board; and

(b) do not grant any vested property interest to the permittee.

8. In the event that the property, on which an approved range improvement is located is sold, exchanged, or withdrawn from use, the permittee shall receive no more than the amount the permittee contributed towards the original cost of the range improvement project, minus the indicated depreciation amount; or in the alternative, may be allowed 90 days to remove improvements pursuant to Section 53C-4-202(6).

9. If the range improvement project is designed to increase carrying capacity, the permittee shall agree to pay for the increase in AUMs annually starting no later than two years after project completion. The agency may allow any increase in fees to be phased in at 20% per year.

10. The agency may participate in the cost of designated range improvement projects, or maintenance of existing range improvement projects, by providing funding in amounts and at rates determined by the agency.

11. The agency's cost/share portion of the project may be in the form of project materials. In these instances, the permittee shall be required to provide all necessary equipment and manpower to complete the project to specifications required by the agency.

**R850-50-1200. Additional Leases.**

If the agency determines that there is unused forage available on a parcel of trust land resulting from temporary

conditions, it may issue an additional permit or permits. These permit(s) shall be issued in accordance to R850-50-400. Existing permittees shall have a first right of refusal to unused forage.

**R850-50-1300. Rights Reserved to the Agency.**

In all grazing permits, the agency shall expressly reserve the right to:

1. issue mineral leases, special use leases, timber sales, materials permits, easements, rights-of-entry, and any other interest in the trust land;

2. issue permits for the harvesting of seed from plants on the trust land. If loss of use occurs from harvesting activities, a credit for the amount of loss shall be made to the following year's assessment;

3. enter upon and inspect the trust land or to allow scientific studies upon trust land at any reasonable time;

4. allow the public the right to use the trust land for purposes and periods of time permitted by policy and rules. However, nothing in these rules purports to authorize trespass on private land to reach trust land;

5. require that all water rights on trust land be filed in the name of the agency and to require express written approval prior to the conveyance of water off trust land;

6. require a permittee, when an agency-owned water right is associated with the grazing permit, to ensure that the water right, to the extent allowed under the permit, is maintained in compliance with state law;

7. close roads for the purpose of range or road protection, or other administrative purposes;

8. dispose of the property without compensation to the permittee, subject to R850-50-1100(7); and

9. terminate a grazing permit in order to facilitate management pursuant to R850-50-200 or for higher and better uses of trust lands.

**R850-50-1400. Trespass.**

1. Unauthorized activities which occur on trust land shall be considered trespass and damages shall be assessed pursuant to 53C-2-301. These activities include:

(a) the use of forage at times and at places not authorized by the permit;

(b) the use of forage in excess of that authorized by the permit;

(c) grazing or trailing livestock on or across trust land without a valid permit or right-of-entry;

(d) the dumping of garbage or any other material on the trust land; and

(e) allowing another person to graze or trail livestock on the permitted property without the express written consent of the agency.

2. The permittee shall cooperate with the agency in taking civil action against the owners of trespass livestock to recover damages for lost forage and other damages.

**R850-50-1500. Trailing Livestock Across Trust Land.**

1. The trailing of livestock across trust land by a person not holding a grazing permit may be authorized if no other reasonable means of access is available.

2. Written approval in the form of a right-of-entry shall be obtained in advance from the agency.

3. The authorization to trail livestock across trust land shall restrict and limit the route, the number and type of animals, and the time and duration, which shall not exceed two consecutive days, of the trailing.

**R850-50-1600. Modified Grazing Permit.**

1. At the discretion of the director, the agency may issue modified grazing permits in instances where the proposed use

is grazing related but is more intensive than livestock grazing alone and when improvements, if any, are primarily temporary in nature. Such uses may include camps, corrals, feed yards, irrigated livestock pastures, or other related uses.

2. Modified grazing permits shall be subject to the following terms and conditions:

(a) The term of a modified grazing permit shall be no longer than 15 years and contain terms, conditions, and provisions the agency, in its discretion, deems necessary to protect the interest of the trust beneficiaries.

(b) A modified grazing permit is subject to cancellation pursuant to R850-50-600(2).

(c) The annual rental for a modified grazing permit shall be based on the fair market value of the permitted property. Fair market value of the permitted property and annual rental rates shall be determined by the agency pursuant to R850-30-400. Periodic rental reviews may be completed pursuant to R850-30-400(5).

(d) Upon cancellation of the modified grazing permit, the permittee shall be allowed 90 days to remove any personal property.

(e) Prior to the issuance of a modified grazing permit, or for good cause shown at any time during the term of the modified grazing permit, the applicant or permittee may be required to post a bond with the agency in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit. Any bond posted pursuant to this rule is subject to R850-30-800(2) through (4).

**R850-50-1700. Supplemental Feeding.**

1. Supplemental livestock feeding may be permitted subject to:

(a) written authorization by the agency;

(b) the designation of a specific area, length of time, number, and class of livestock; and

(c) a determination that this shall not inflict long term damage upon the property.

2. The agency may assess an additional fee for authorized supplemental feeding or may require the permittee to obtain a modified grazing permit.

3. Emergency supplemental feeding shall be allowed for ten days prior to notification.

4. The forage used for supplemental feeding shall be certified weed free.

**KEY: administrative procedures, range management**

**January 21, 2016** 53C-1-302(1)(a)(ii)

**Notice of Continuation June 27, 2012** 53C-2-201(1)(a)

53C-5-102

**R895. Technology Services, Administration.****R895-5. Acquisition of Information Technology.****R895-5-1. Purpose.**

The purpose of this rule is to identify the standards under which an agency of the executive branch must obtain approval from the Chief Information Officer before acquiring information technology and technology related services.

**R895-5-2. Authority.**

The rule is issued by the Chief Information Officer under the authority of Sections 63F-1-205 and 63F-1-206 of the Utah Technology Governance Act, and Section 63G-3-201 of the Utah Rulemaking Act, Utah Code.

**R895-5-3. Scope of Application.**

All agencies of the Executive Branch of State government, including its administrative sub-units, except the State Board of Education, the Board of Regents and institutions of higher education, and elective constitutional offices, are to be included within the scope of this rule.

**R895-5-4. Definitions.**

(1) "Hardware" means physical technology (i.e., equipment) used to process, manage, store, transmit, receive, or deliver information. This term also includes telephony products.

(2) "Small technology purchases" means a purchase, lease, or rental of hardware, software, and/or technology services that is estimated to be less than \$50,000.

(3) "Software" means non-physical technology used to process, manage, store, transmit, receive, or deliver information. The term also includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates, or replacements.

(4) "Technology services" means all the services, functions, and activities that facilitate the design, implementation, creation, or use of software, hardware, or telephony products. The term includes data acquisition, seat management, staffing augmentation, maintenance, and subscription services.

**R895-5-5. Purchase of Hardware, Software, and Technology Services.**

(1) The Chief Information Officer (CIO) shall exercise general supervision and control over the purchase of all hardware, software, and technology services.

(2) The CIO may not require a business case for small technology purchases.

(3) Purchase requirements for hardware, software, and technology services shall not be artificially divided so as to constitute a small technology purchase under this rule.

**R895-5-6. Rule Compliance Management.**

The CIO may monitor compliance of this rule within the State Executive Branch, and report any findings or violations of this rule to an agency's Executive Director or designee. A State Executive Branch agency's Executive Director, or designee, upon becoming aware of a violation of this rule shall provide the CIO a report of action(s) taken in response to violation of this rule.

**KEY: IT standards, IT bid committee, technology best practices, technology purchases**

February 23, 2016

63F-1-205

Notice of Continuation December 29, 2015

63G-3-201

**R930. Transportation, Preconstruction.****R930-7. Utility Accommodation.****R930-7-1. Purpose.**

(1) The purpose of this rule is to:

- maximize public safety;
- provide for efficient highway operations and maintenance of roadways;
- maximize aesthetic quality;
- minimize future conflicts between the highway system and utility companies serving the general public; and
- ensure that use and occupancy by utility companies do not impair or increase the cost of future highway construction, expansion, or maintenance or interfere with any right of way reserved for these purposes.

(2) This rule prescribes conditions under which utility facilities may be accommodated on right of way and sets forth the state's regulations covering the placement and relocation of utility facilities in conflict with the construction and maintenance of highways.

(3) This rule should be interpreted to achieve maximum lawful public use of right of way for transportation purposes and to ensure that utility installations and operations affecting state right of way are accomplished in accordance with state and federal laws and regulations. It is in the public interest for utility facilities to be accommodated within rights of way when the accommodation does not adversely affect the integrity of highway features. The permitted use and occupancy of right of way for non-highway purposes is subordinate to the primary interests for transportation and safety of the traveling public.

(4) This rule is provided to facilitate the establishment of consistent expectations and effective working relationships between UDOT and utility companies through continuous communication, coordination and, cooperation.

(5) Through the Code of Federal Regulations (23 CFR, Part 645.215(a)), the U.S. Department of Transportation requires each state to submit a statement to the Federal Highway Administration (FHWA) on the authority of utility companies to use and occupy the right of way of state highways, the state highway agency's power to regulate the use, and the policies the state employs or proposes to employ for accommodating utilities within the right of way of Federal-aid highways under its jurisdiction. This rule demonstrates compliance to FHWA.

**R930-7-2. Authority and Source Documents.**

This rule is enacted under the authority of Section 72-6-116(2), wherein UDOT is authorized and given the responsibility to regulate and make rules for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of utility facilities within state administered highways, including ordering their relocation as may become necessary.

(1) Utah Code provides for the accommodation of utility facilities within the right of way and provides UDOT the authority to promulgate rules and regulations for administering those provisions. Accordingly, this rule has been developed pursuant to the following state and federal laws, codes, regulations, policies:

- Utah Code, Title 54, Public Utilities, Section 54-3-29;
- American Association of State Highway and Transportation Officials (AASHTO) publications, A Guide for Accommodating Utilities within Highway Right of Way and A Policy on the Accommodation of Utilities within Freeway Right of Way; and

- AASHTO publications, Roadside Design Guide and A Policy on Geometric Design of Highways and Streets.

(2) This rule incorporates by reference 23 CFR Section 645, Subpart B, (November 22, 2000).

(3) UDOT has secured the authority from FHWA to issue permits for the use or occupancy of the right of way by utility

facilities on Federal-aid highways. The use of Federal-aid highway right of way by utilities shall be in accordance with 23 CFR 645.215.

**R930-7-3. Definitions.**

(1) "Abandoned facility" is a utility facility that is not in use, no longer actively providing a service and is physically disconnected from the operating facility that is still in use and still actively providing a service. Abandoned facilities remain the property of the utility company.

(2) "Access control" is the regulation of public access to and from properties abutting the highway facilities. The two basic types of access control are:

- "No access (NA)" means access to through-traffic lanes is not allowed except at interchanges. Crossings at grade and direct driveway connections are prohibited.

- "Limited access (LA)" means access to selected public roads may be provided. There may be some crossings at grade and some private driveway connections.

(3) "Administrative citation" is a letter from UDOT to a utility company citing one or more non-compliance items and proper redress requirements such as action on the appropriate bond, revocation of permit, and revocation of a license agreement.

(4) "AASHTO" is the American Association of State Highway and Transportation Officials.

(5) "Backfill" means the replacement of soil removed during construction. It may also denote material placed over or around structures and utilities.

(6) "Bedding" means the composition and shaping of soil or other suitable material to support a pipe, conduit, casing, or utility tunnel.

(7) "Boring" means the operation by which carriers or casings are pushed or jacked under highways without disturbing the highway structure or prism. Bores are carved progressively ahead of the leading edge of the advancing pipe as soil is mucked back through the pipe.

(8) "Carrier" means a pipe directly enclosing a transmitted fluid (liquid, gas, or slurry).

(9) "Casing" is a larger pipe, conduit, or duct enclosing a carrier.

(10) "Clear Zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and a clear run-out area. The desired width is dependent upon traffic volumes, speeds, and roadside geometry.

(11) "Coating" is material applied to or wrapped around a pipe.

(12) "Conduit" is an enclosed tubular casing for the protection of wires and cables.

(13) "Depth of bury (cover)" means the depth from ground or roadway surface to top of pipe, conduit, casing, cable, utility tunnel, or similar facility.

(14) "Deviation" means a granted permission to depart from the standards and requirements of this rule.

(15) "Emergency work" is utility company work required to prevent loss of life or significant damage to property.

(16) "Encasement" is a structural element surrounding a carrier or casing.

(17) "Encroachment" means the unauthorized use of highway right of way.

(18) "Encroachment permit" is a document that specifies the requirements and conditions for performing work on the highway right of way.

(19) "Environmentally protected areas" are areas that include, but are not limited to, wetlands, flood plains, stream channels, rivers, threatened or endangered species, archaeological sites, and historic sites.

(20) "Expressway" is a divided arterial highway for through traffic with partial control of access and generally with grade separations at major intersections.

(21) "Federal-aid highways" are highways eligible to receive Federal-aid.

(22) "FHWA" is the Federal Highway Administration.

(23) "Flexible carrier pipe" is a plastic, fiberglass, or metallic pipe having a large diameter to wall thickness ratio and which can be deformed without undue stress.

(24) "Flowable fill" is low strength flowable concrete as defined in UDOT Standard Specification 03575.

(25) "Freeway" is an expressway with full control of access.

(26) "Frontage road" is a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

(27) "Grade" is the rate or percent of change in slope, either ascending or descending, measured along the centerline of a roadway or access.

(28) "Grounded" means electrically connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

(29) "Grout" is a cement mortar or slurry of fine sand or clay.

(30) "Highway, street, or road" are general terms denoting a public way for the transportation of people, materials, and goods, but primarily for vehicular travel, including the entire area within the right of way.

(31) "Horizontal directional drilling" (HDD), also known as directional boring and directional drilling, is a method of installing underground pipes and conduits from the surface along a prescribed bore path. The process is used for installing telecommunications and power cable conduits, water lines, sewer lines, gas lines, oil lines, product pipelines, and casings used for environmental remediation. It is used for crossing waterways, roadways, congested areas, environmentally protected areas, and any area where other methods are not feasible.

(32) "Interstate highway system" (Interstate) is the Dwight D. Eisenhower National System of Interstate and Defense Highways as defined in the Federal-aid Highway Act of 1956 and any supplemental acts or amendments.

(33) "License Agreement or Statewide Utility License Agreement" is a document by which UDOT licenses the use and occupancy, with conditions, of highway rights of way for utility facilities.

(34) "Manhole" or "utility access hole" is an opening in an underground system that workers or others may enter for the purpose of making installations, removals, inspections, repairs, connections, and tests.

(35) "Median" is the portion of a divided highway separating the traveled ways for traffic in opposite directions.

(36) "MUTCD (Utah MUTCD)" means the current version of Utah Manual on Uniform Traffic Control Devices referenced in R920-1.

(37) "Pavement structure" is the combination of sub-base, base course, and surface course placed on a sub-grade to support the traffic load.

(38) "Permit" means encroachment permit.

(39) "Pipe" is a tubular product made as a production item for the transmission of liquid or gaseous substances. Cylinders formed from plate material in the fabrication of auxiliary equipment are not pipe as defined here.

(40) "Pipeline" is a continuous carrier used primarily for the transportation of liquids, gases, or solids from one point to another using either gravity or pressure flow.

(41) "Plowing" means the direct burial of utility lines by means of a mechanism that breaks the ground, places the utility line, and closes the break in the ground in a single operation.

(42) "Practicable" means reasonably capable of being accomplished or feasible as determined by UDOT.

(43) "Relocate" means the adjustment of utility facilities when found by UDOT to be necessary for construction or maintenance of a highway. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring the necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(44) "Right of way" is a general term denoting land, property, or interest therein, usually in a strip acquired for or devoted to transportation purposes.

(45) "Roadside" is a general term denoting the area between the outer edge of the roadway shoulder and the right of way limits.

(46) "Roadway" is the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

(47) "Slope" is the relative steepness of the terrain expressed as a ratio or percentage. Slopes may be categorized as positive or negative and as parallel or cross slopes in relation to the direction of traffic.

(48) "State highways" are those highways designated as State Highways in Title 72, Chapter 4, Designation of State Highways.

(49) "Structure" means any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. It also includes buildings, signs, and UDOT facilities with foundations.

(50) "Subsurface Utility Engineering (SUE)" is the management of certain risks associated with utility mapping at appropriate quality levels, utility coordination, utility relocation, communication of utility data, utility relocation cost estimates, implementation of utility accommodation policies, and utility design. SUE tools include traditional records, site surveys, and new technologies such as surface geophysical methods and non-destructive vacuum excavation, to provide quality levels of information. The SUE process for collecting and depicting information on existing subsurface Utility Facilities is described in ASCE Standard 38-02, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.

(51) "Trenched" means installed in a narrow open excavation.

(52) "Trenchless (Untrenched)" means installed without breaking the ground or pavement surface by a construction method such as directional drilling, boring, tunneling, jacking, or auguring.

(53) "UDOT" is the Utah Department of Transportation and where referenced to be contacted, submitted to, approved by, accepted by or otherwise engaged, means an authorized representative.

(54) "Utility" or "utility facility" means privately, publicly, cooperatively, or municipally owned pipelines, facilities, or systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, petroleum products, cable television, water, sewer, steam, waste, storm water not connected with highway drainage, and other similar commodities, which directly or indirectly service the public, or any part thereof.

(55) "Utility appurtenances" include but are not limited to pedestals, manholes, vents, drains, rigid markers, meter pits, sprinkler pits, valve pits, and regulator pits.

(56) "Utility company" is a privately, cooperatively, or publicly owned utility, including utilities owned by political subdivisions, and where referenced includes authorized

representatives, contractors, and agents.

(57) "Vent" is an appurtenance designed to discharge gaseous contaminants from a casing.

#### **R930-7-4. Scope.**

(1) This rule supersedes portions of Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights of Way including Section 5 and portions relating to utility accommodation or that refer to utilities in the right of way or percent of reimbursement, which are part of R930-6 at the time of enactment of this rule.

(2) Regulations, laws, or orders of public authority or industry code prescribing a higher degree of protection or construction than provided by this rule shall govern.

#### **R930-7-5. Application.**

(1) This rule applies to privately, cooperatively, and publicly owned utility companies, including utility companies owned by political subdivisions, and shall include telecommunication, gas, oil, petroleum, electricity, cable television, water, sewer, data and video transmission lines, drainage and irrigation systems, and other similar utilities to be located, accommodated, adjusted or relocated within, on, along, across, over, through, or under the highway right of way. This rule does not apply to utility facilities that are required for UDOT highway purposes. This rule applies to underground, surface, or overhead facilities, either singularly or in combination, including bridge attachments.

(2) This rule applies to Federal-aid highway projects including local government projects. In compliance with 23 CFR 645.209(g) local governments are required to enter into formal agreements with UDOT that provide for a degree of protection to the highway at least equal to the protection provided by this rule.

#### **R930-7-6. General Installation Requirements.**

##### **(1) General.**

(a) Utility companies desiring to use right of way under the jurisdiction of UDOT for the installation or maintenance of any utility facility must be licensed to do so by entering into a license agreement with UDOT. This statewide agreement sets forth the procedures and conditions for the issuance of encroachment permits for all installations statewide. Encroachment permits are not issued without a license agreement first being executed. UDOT may impose additional restrictions or requirements for license agreements or encroachment permits.

(b) A permitted facility shall, if necessary, be modified by the utility company to improve safety or facilitate alteration or maintenance of the right of way as determined by UDOT.

##### **(2) License Agreements or Statewide Utility License Agreements.**

(a) Agreements are executed by UDOT and utility companies to set forth the terms and conditions for the accommodation and maintenance of utility facilities within the right of way. A license agreement is required for, but does not guarantee the approval of encroachment permits.

(b) As part of executing a license agreement with UDOT, owners of facilities located in the right of way are required to post a continuous bond in the amount of \$100,000, naming UDOT as the insured, to guarantee satisfactory performance. The Statewide Utilities Engineer may approve a lesser amount. Failure by a utility company to maintain a valid bond in the amount required is cause for denying issuance of future permits to that utility company, and for the removal of that utility company's facilities from the right of way.

(c) A public utility is exempt from the bond requirements described in this section if the public utility:

- (i) is a member of the municipal insurance pool;

- (ii) is a political subdivision; or

- (iii) at UDOT's option carries liability insurance with minimum coverage of \$1,000,000 per occurrence and as more specifically described in its License Agreement.

(d) Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way. The utility company is liable for all restoration costs incurred as a result of damages caused by its utility, and its liability is not limited to the amount of the bond.

(e) License agreements may be terminated at any time by either party upon 30 days advance written notice to the other. Permits previously issued and approved under a terminated agreement are not affected and remain in effect on the same terms and conditions set forth in the agreement and permits. The obligation to maintain the \$100,000 bond continues until the utility company's facilities are removed from UDOT's right of way.

##### **(3) Emergency Work.**

(a) In all emergency work situations, the utility company or its representative shall contact UDOT immediately and on the first business day shall contact UDOT to complete a formal permit. Failure to contact UDOT for an emergency work situation and obtain an encroachment permit within the stated time period is considered to be a violation of the terms and conditions of the utility company's license agreement. At the discretion of the utility company, emergency work may be performed by a bonded contractor, public agency, or a utility company. None of the provisions of this rule are waived for emergency work except for the requirement of a prior permit.

##### **(4) One Call Requirements.**

(a) Underground facilities are not permitted within the right of way unless the utility company subscribes to Blue Stakes of Utah and other appropriate "call-before-you-dig" systems, or otherwise provides utility plans as detailed in Section R930-7-11(6)(a) of this rule.

##### **(5) Preservation of New Pavement.**

(a) Cuts or open excavations on newly constructed, paved, or overlaid highways are not allowed for two years. If an emergency cut or excavation occurs, the responsible utility company shall comply with any special conditions imposed by UDOT regarding restoration of the roadway.

##### **(6) Encroachment Permits.**

###### **(a) Encroachment Permits on State Highways.**

Utility companies shall obtain an encroachment permit from UDOT for the installation and maintenance of utility facilities on the right of way. Encroachment permits are approved or disapproved by UDOT. Applications for encroachment permits are submitted to the Region Permits Officers by the utility company or its contractor. No utility company or utility company contractor shall begin any utility work on the right of way until an approved encroachment permit is issued by UDOT and the utility company is authorized to proceed in writing. Prior to the issuance of encroachment permits, fees are assessed to cover related costs incurred by UDOT including costs for planning, coordination, and utility plan review.

If the utility company expects work to significantly impact travel lane capacity, UDOT recommends the utility company contact the appropriate Region Permit Office to discuss concepts in advance of submitting an encroachment permit application.

Utility companies shall submit two sets of plans depicting the proposed installation. The plans shall be sized as required by UDOT and include utility company identification, work location, utility type and size, type of construction, vertical and horizontal location of facilities relative to the centerline of road, location of all appurtenances, trench details, right of way limits, and traffic control plans. Traffic control plans shall conform to



the Utah MUTCD as outlined in Section R930-7-7(1)(d), are mandatory for each instance of utility construction or maintenance, and shall be attached to each permit application.

Utility companies may authorize their contractors to obtain permits on their behalf. All terms and conditions set forth in the license agreement apply. The utility company's construction forces or the utility contractor shall carry a copy of the approved permit at all times while working on the right of way.

(b) Bonding and Liability Insurance Requirements.

(i) Individual (one-time use) Encroachment Permit Bonding Requirements. As authorized by Sub-section 72-7-102(3)(b)(i) this rule requires encroachment permit applicants to post a Performance and Warranty Bond, using UDOT's approved bond form, for a period of three years from the date of beginning of work or two years from the end of work, whichever provides the longer period of coverage. A separate Performance and Warranty Bond is required for each individual encroachment permit. Political subdivisions of the state are not required to post a bond unless the political subdivision fails to meet the terms and conditions of previous permits issued as determined by UDOT. The amount of the bond is determined by the UDOT Region Permits Officer based on the scope of work being performed but will not be less than \$10,000.

(ii) Statewide (multiple use) Encroachment Permit Bonding Option. In lieu of posting multiple individual one-time use bonds, encroachment permit applicants who routinely acquire encroachment permits may elect to post a statewide performance and warranty bond, using UDOT's approved bond form. A statewide bond satisfies bonding requirements for work in all UDOT Regions. The bond amount is determined by UDOT but will not be less than \$100,000. A valid statewide bond period shall be not less than three years from the date of completion of permitted work.

(iii) Inspection Bond. UDOT may require an additional inspection bond to ensure payment for UDOT field review and inspection costs before an encroachment permit is granted.

(iv) Proceeds Against the Bond. UDOT may proceed against the bond to recover all expenses incurred if payment is not received from the permit applicant within 45 calendar days of receiving an invoice. Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way due to utility caused damages. Failure by the utility company to maintain a valid bond in the amounts required shall be cause for denying issuance of future permits and for the removal of the utility from the right of way.

(v) Liability Insurance Requirements. Permit applicants are also required to provide a certificate of liability insurance in the minimum amounts of \$1,000,000 per occurrence and \$2,000,000 in aggregate. Failure to meet this requirement will result in application denial. Liability insurance coverage is required throughout the life of the permit and cancellation will result in permit revocation.

(vi) Information about bond forms and liability insurance requirements are available on UDOT's website at: <http://www.udot.utah.gov/go/encroachmentpermit>

(c) Cancellation of Permits. Any failure on the part of a utility company to comply with the terms and conditions set forth in the license agreement or the encroachment permit may result in cancellation of the permit. Failure to pay any sum of money for costs incurred by UDOT in association with installation or construction review, inspection, reconstruction, repair, or maintenance of the utility facilities may also result in cancellation of the permit. UDOT also may remove the facilities and restore the highway and right of way at the sole expense of the utility company. Prior to any cancellation, UDOT shall notify the utility company in writing, setting forth the violations, and will provide the utility company a reasonable time to correct the violations to the satisfaction of UDOT.

(d) Assignment of Permits. Permits shall not be assigned without the prior written consent of UDOT. All assignees shall be required to file a new permit application.

(e) Indemnification. Permit holders performing utility work on the right of way shall, at all times, indemnify and hold harmless UDOT, its employees, and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, or any other related operation during the work or as a result of the work. Permit holders shall also be responsible for the completion, restoration, and maintenance of any excavation for a period of three years unless UDOT requires a longer period of indemnification due to specific or unique circumstances.

### **R930-7-7. General Design Requirements.**

(1) General.

(a) Joint use of state right of way may impact both the highway and the utility. Each utility company requesting the use of right of way for the accommodation of its facilities is responsible for the proper planning, engineering, design, construction, and maintenance of proposed installations. The utility company shall coordinate with UDOT and develop its projects to meet design standards and to optimize safety, cost effectiveness, and efficiency of operations for both the utility company and the state. Utility companies are directed to the following AASHTO publications for assistance:

(i) Roadside Design Guide;

(ii) A Policy on Geometric Design of Highways and Streets;

(iii) A Guide for Accommodating Utilities within Highway Right of Way; and

(iv) A Policy on the Accommodation of Utilities within Freeway Right of Way.

(b) The utility company is responsible for the design, construction, and maintenance of its facilities installed within the right of way. All elements of these facilities including materials used, installation methods, and locations shall be subject to review and approval by UDOT.

(c) Plans, Drawings and Specifications. The utility company shall provide UDOT with comprehensive plans, drawings and specifications as may be required for all proposed utility facilities within the right of way. Utility plan submittals shall contain physical features of the utility site including, but not limited to the following:

(i) highway route number;

(ii) highway mile post locations;

(iii) map with route and site location;

(iv) existing features such as manholes, structures, drainage facilities, other utilities, access controlled and right of way lines, center line of highway relative to the utility facility location, and relevant vertical information;

(v) plan and drawing scales; and

(vi) legend including definition of symbols used.

The plans, drawings, and specifications shall also contain administrative information, identification and type of materials to be used, relevant information on adjacent land classification and ownership, related permits and approvals if required, and identification of the responsible Engineer of Record.

(d) Traffic Control Plans. The utility company shall provide traffic control plans (TCP) that conform to the current Utah MUTCD and UDOT Traffic Control Standards and Specification.

(e) The utility company is responsible to ensure compliance with industry codes and standards, the conditions and special provisions specified in the permit, and applicable laws, rules and regulations of the State of Utah and the Code of Federal Regulations.

(f) All utility facility installations located in, on, along, across, over, through, or under the surface of the right of way,

including attachments to highway structures, are the responsibility of the utility company and, as a minimum, shall meet the following utility industry and governmental requirements.

(i) Electric power and communications facilities shall conform to the current applicable National Electric Safety Code.

(ii) Water, sewage and other effluent lines shall conform to the requirements of the American Public Works Association or the American Water Works Association.

(iii) Pressure pipelines shall conform to the current applicable sections of the standard code of pressure piping of the American National Standards Institute, 49 CFR 192, 193 and 195, and applicable industry codes.

(iv) Liquid petroleum pipelines shall conform to the current applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways.

(v) Any pipelines carrying hazardous materials shall conform to the rules and regulations of the U.S. Department of Transportation governing the transmission of the materials.

(vi) Telecommunications with longitudinal installations within Interstate, Freeway and other Access Controlled Highway right of way shall conform to R907-64.

(2) Subsurface Utility Engineering.

(a) The use of Subsurface Utility Engineering (SUE) shall be required as an integral part of the design for new utility facility installations on the right of way when determined by UDOT to be warranted.

**R930-7-8. Definitive Design Requirements.**

(1) Location Requirements.

(a) Longitudinal Installations. The type of utility construction, vertical clearances, lateral location of poles and down guys, and related ground mounted utility facilities along roadways are factors of major importance in preserving a safe traffic environment, the appearance of the highway, and the efficiency and economy of highway construction and maintenance. Longitudinal utility facilities shall be located on a uniform alignment and as close to the right of way line as practicable. The joint use of pole lines is acceptable and encouraged; however, all installations shall be located so that all servicing may be performed with minimal traffic interference. The following additional requirements apply to longitudinal installations.

(i) Utility facilities shall be located so as to minimize the need for future utility relocations due to highway improvements, avoid risks to the highway, and not adversely impact environmentally protected areas.

(ii) The location of utility installations along urban streets with closely abutting structures such as buildings and signs generally requires special considerations. These considerations shall be resolved in a manner consistent with the prevailing limitations and as approved by UDOT.

(iii) The location of utility facilities and associated appurtenances shall be in accordance with the Americans with Disabilities Act.

(iv) The horizontal location of utility facilities and appurtenances within the right of way shall conform to the current edition of the AASHTO Roadside Design Guide.

(v) Adequate warning devices, barricades, and protective devices must be used to prevent traffic hazards. Where circumstances necessitate the excavation closer to the edge of pavement than established above, concrete barriers or other UDOT approved devices shall be installed for protection of traffic in accordance with UDOT Traffic Control Standards and UDOT's Supplemental Drawings.

(vi) There are greater restrictions on the accommodation of utility facilities within interstate, freeway, and other access controlled highway right of way. See Section R930-7-10 for

details.

(b) Overhead Installations.

(i) Minimal vertical clearances for installed overhead lines are 18 feet for crossings and longitudinal installations, and 23 feet for intersections. In addition, the vertical clearance for overhead lines above the highway and the vertical and lateral clearance from bridges and above ground UDOT facilities shall meet or exceed the current edition of the National Electrical Safety Code. Where overhead lines cross UDOT above ground facilities, including but not limited to signs, traffic signal heads, poles, and mast arms, vertical and lateral clearance shall meet OSHA working clearances for electrical lines in effect at the time of the installation which will accommodate maintenance work by UDOT personnel without having to discharge or shield the lines.

(ii) Utility companies planning to attach cable to other utility company poles shall obtain approval from the owner of the poles prior to a permit being issued by UDOT.

(iii) The utility facility shall conform to the current edition of the AASHTO Roadside Design Guide. Where there are existing curbed sections, utility facilities shall be located as far as practicable behind the face of curbs and, where feasible, behind sidewalks at locations that will not interfere with adjacent property use. In all cases there shall be a minimum of two feet clearance behind the face of the curb. All cases shall be resolved in a manner consistent with prevailing limitations and conditions.

(iv) Before locating a utility facility at other than the right of way line, consideration shall be given to designs using self-supporting, armless single pole construction, with vertical alignment of wires or cables, or other techniques permitted by government or industry codes that provide a safe traffic environment. Deviations from required clearances may be made where poles and guys can be shielded by existing traffic barriers or placed in areas that are inaccessible to vehicular traffic.

(v) Where irregular shaped portions of the right of way extend beyond or do not reach the normal right of way limits, variances in the location of utility facilities may be allowed to maintain a reasonably uniform alignment and thereby reduce the need for guys and anchors between poles and roadway.

(c) Subsurface Installations.

(i) Underground utilities may be placed longitudinally outside of the pavement by plowing or open trench method. Underground utilities shall be located on a uniform alignment and as near as practicable to the right of -way line to provide a safe environment for traffic operations, preserve the integrity of the highway, and preserve space for future highway improvements or other utility facility installations. The allowable distance from the right of way line will generally depend upon the terrain and obstructions such as trees and other existing underground and overhead objects. On highways with frontage roads, longitudinal installations shall be located between the frontage roads and the right of way lines. Utility companies shall include the placement of markers referenced in Section R930-7-11(5).

(ii) Unless UDOT grants a deviation, underground utility installations across existing roadways shall be performed by trenchless method in accordance with UDOT requirements and casings may be required. Pits shall be located outside of the clear zone and at least 30 feet from the edge of the nearest through traffic lane and at least 20 feet from the edge of pavement on ramps. On low traffic roadways and frontage roads, as determined by UDOT, bore pits shall be at least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections and at least five feet from the face of curb and meet clear zone requirements from the edge of the traveled way whichever is greater. Bore pits shall be located and constructed so as to eliminate interference with highway structural footings. Shoring shall be used where necessary.

TABLE 1

Bore Pit Locations	
Bore Pit Set Back	Outside Clear Zone
At least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections and at least five feet from the face of curb	At least 30 feet from the edge of the nearest through traffic lane and at least 20 feet from the edge of pavement on ramps.

(iii) The depth of bury for all utility facilities under pavement shall be a minimum of four feet below the top of pavement or existing grade including open drainage features. Where utility facilities are installed within 20 feet from the edge of pavement, the depth of bury shall be a minimum of five feet below top of grade so as to allow for installation of UDOT signs or delineators. Utility facilities under sidewalks shall be installed a minimum of three feet below the top of sidewalk.

(iv) Utility facilities installed greater than 20 feet from the edge of pavement shall be installed a minimum depth of three feet below grade. Specific types of facilities such as high pressure gas lines or petroleum lines may require additional cover.

(v) All underground utilities installed in the right of way must meet the minimum standards for compaction as outlined in the current edition of the UDOT Standards and Specifications for Road and Bridge Construction.

(vi) Where minimum depth of bury is not feasible, the facility shall be rerouted or, if permitted by UDOT, protected with a casing, encasement, concrete slab, or other suitable protective measures.

TABLE 2

SUMMARY OF UDOT DEFINITIVE UTILITY REQUIREMENTS  
MINIMUM DEPTH OF BURY  
Longitudinal and Crossing Installations  
All underground utilities (cased and uncased)

Under Pavement Surface	Under Sidewalks	Under Ditch	Less than 20 ft. from edge of pavement	Greater than 20 ft. from edge of pavement
Min. of three feet four ft. below top of pavement	Min. of three ft. below top of sidewalk	Min. of three ft. below low point of ditch	Min. of five ft. below natural grade	Min. of five ft. below natural grade

(d) Crossings.

(i) Utility crossings shall be at 90 degrees unless a deviation is approved by UDOT. Crossing installations under paved surfaces shall be by trenchless methods. Jetting by means of water or compressed air is not permitted.

(ii) Utility crossings shall be avoided in deep roadway cuts, near bridge footings, near retaining and noise walls, at highway cross drains where flow of water may be obstructed, in wet or rocky terrain where it is difficult to attain minimum cover, and through slopes under structures.

(e) Median Installations.

(i) Overhead utility facilities such as poles, guys, or other related facilities shall not be located in highway medians. Deviations may be considered for crossings where wide medians provide for sufficient space to meet clear zone requirements from the edges of the travelled ways.

(f) Appurtenances.

(i) Utility appurtenances shall be located outside the clear zone and as close to the right of way line as practicable. Where these requirements cannot be met and no feasible alternative exists, a deviation to locate appurtenances within the clear zone in areas that are shielded by traffic barriers may be considered after the utility company provides written justification for such location for UDOT review. Cabinets, regulator stations, and

other similar utility components shall not be located on the right of way unless they are determined by UDOT to be sufficiently small to allow a deviation.

(ii) Manholes, valve pits, and similar appurtenances shall be installed so that their uppermost surfaces are flush with the adjacent undisturbed surface.

(iii) Utility access points and valve covers shall be located outside the roadway where practicable. In urbanized areas where no feasible alternative to locating utility access points and valve covers outside of the roadway exists, the utility company must coordinate with UDOT to meet safety, operational, and maintenance requirements of both the utility company and UDOT.

(iv) Utility companies shall avoid placing manholes in the pavement of high speed and high volume highways. Deviations may be considered after written justification for such location is submitted by the utility company and reviewed and approved by UDOT. New manhole installations shall be avoided at highway intersections and within the wheel path of traffic lanes.

(v) Vents, drains, markers, utility access holes, shafts, shut-offs, cross-connect boxes, pedestals, pad-mounted devices, and similar appurtenances shall be located along or across highway rights of way in accordance with the provisions of the Americans With Disabilities Act.

(2) Environmental Compliance.

(a) The utility company shall comply with all applicable state and federal environmental laws and regulations, and shall obtain necessary permits. Environmental requirements include but are not limited to the following.

(i) Water Quality. A "Storm Water General Permit for Construction Activities" is required from the Utah Division of Water Quality for disturbances of one or more acres of ground surface.

(ii) Wetlands and Other Waters of the U.S. A "Section 404 Permit" is required from the U.S. Army Corps of Engineers for any impact to a wetland or water of the U.S.

(iii) Threatened or Endangered (T and E) Species. Comply with the Endangered Species Act; avoid impacts to T and E species or obtain a Permit from the U. S. Fish and Wildlife Service.

(iv) Historic and Archaeological Resources. Comply with the "National Historic Preservation Act"; avoid impacts to historic and archaeological resources. If resources could be impacted, contact the Utah State Historic Preservation Office.

(b) The utility company is responsible for environmental impacts and violations resulting from construction activities performed by the utility company or its contractors.

(c) If UDOT discovers or is made aware of a violation by the utility company or a failure to comply with state and federal environmental laws, regulations and permits, UDOT may revoke the permit, notify appropriate agencies, or both.

(3) Installation of Utilities in Scenic Areas.

(a) The type, size, design, and construction of utility facilities in areas of natural beauty shall not materially alter the scenic quality, appearance, and views from the highway or roadsides. These areas include scenic strips, overlooks, rest areas, recreation areas, adjacent rights of way and highways passing through public parks, recreation areas, wildlife and waterfowl refuges, and historic sites. Utility installations in these areas shall not be permitted. Deviation from this requirement may be allowed if there is no reasonable or feasible alternative as determined by UDOT based on written justification submitted by the utility company. On Federal-aid highways, all decisions related to utility installations within these areas shall be subject to the provisions detailed in 23 CFR 645.209(h).

(i) New underground utility installations may be permitted within scenic strips, overlooks, scenic areas, or in the adjacent rights of way, when they do not require extensive removal, or

alteration of trees, and other shrubbery visible to the highway user, or do not impair the scenic appearance of the area.

(ii) New overhead installations of communication and electric power lines are not permitted in such locations unless there is no feasible and reasonable alternative as determined by UDOT. Overhead installations shall be justified to UDOT by demonstrating that other locations are not available and that underground facilities are not technically feasible, economical or are more detrimental to the scenic appearance of the area.

Any installation of overhead facilities shall be made at a location and in a manner that will not detract from the scenic quality of the area being traversed. The installation shall utilize a suitable design and use materials aesthetically compatible to the scenic area, as approved by UDOT.

(4) Casing and Encasement Requirements.

(a) General. A carrier pipe is sometimes installed inside of a larger diameter pipe defined as a casing. Casings are typically used to provide complete independence of the carrier pipe from the surrounding roadway structure, and to provide adequate protection to the roadway from leakage of a carrier pipeline. It also provides a means for insertion and replacement of carriers without access or disturbance to through-traffic roadways.

(b) Casing requirements for crossing installations.

(i) All pipelines under pressure crossing under the roadway of highways shall be in casings unless the pipeline is welded steel, meets industry corrosion protection standards, complies with federal and state requirements, and meets accepted industry standards regarding wall thickness and operating stress levels. In some cases UDOT may require a casing regardless of these exceptions if needed to protect the roadway, maintain public safety, or both.

(ii) In urban areas where space is limited for venting or where small pipelines are crossing, specifically intermediate high pressure lines, deviations for casing may be granted by UDOT.

(iii) Where a casing is required, it must be provided under medians, from top of back-slope to top of back-slope for cut sections, five feet beyond toe of slope under fill sections, five feet beyond face of curb in urban sections and all side streets, and five feet beyond any structure where the line passes under or through the structure. Deviations must be approved by UDOT. On freeways, expressways, and other access controlled highways, casings shall extend to the access control lines.

(iv) Utility installations by trenchless technologies, such as jacking, boring, or horizontal directional drilling methods, may be placed under highways without a casing pipe if approved by a UDOT representative.

(v) Where minimum bury is not feasible, the facility shall be rerouted or protected with a casing, concrete slab, or other suitable measures as determined by UDOT.

(c) Casings shall be considered for the following conditions:

(i) as an expediency in the insertion, removal, replacement, or maintenance of carrier pipe crossings of freeways, expressways, and other access controlled highways, and at other locations where it is necessary to avoid trenched construction;

(ii) as protection for carrier pipe from external loads or shock either during or after construction of the highway; and

(iii) as a means of conveying leaking fluids or gases away from the area directly beneath the roadway to a point of venting at or near the right of way line, or to a point of drainage in the highway ditch or a natural drainage way.

(d) UDOT may require casings for pressurized carriers or carriers of a flammable, corrosive, expansive, energized, or unstable material.

(e) Trenchless installations of coated carrier pipes shall be cased. Permission to deviate from this requirement may be granted where assurance is provided against damage to the

protective coating.

(f) Encasement or other suitable protections shall be considered for pipelines with less than minimum cover, such as those near bridge footings or other highway structures, or across unstable or subsiding ground, or near other locations where hazardous conditions may exist.

(g) Rigid encasement or suitable bridging shall be used where support of pavement structure may be impaired by depression of flexible carrier pipe. Casings shall be designed to support the load of the highway and superimposed loads thereon and, as a minimum, shall be equal to or exceed the structural requirements of UDOT highway culverts in the UDOT Bridge Design Manual.

(h) Casings shall be sealed at the ends using suitable material to prevent water and debris from entering the annular space between the casing and the carrier. Such installations shall include necessary appurtenances, such as vents and markers.

(5) Mechanical and Other Protective Measures for Uncased Installation.

(a) When highway pipeline crossings are installed without casings or encasement, the following are suggested controls for providing mechanical or other protection.

(i) The carrier pipe shall conform to utility material and design requirements and utility industry and government codes and standards. The carrier pipe shall be designed to support the load of the highway plus superimposed loads operating under all ranges of pressure from maximum internal to zero pressure. Such installations shall use a higher factor of safety in the design, construction, and testing than would normally be required for cased construction.

(ii) Suitable bridging, concrete slabs, or other appropriate measures shall be used to protect existing uncased pipelines which may be vulnerable to damage from construction or maintenance operations. Construction or maintenance activities shall not proceed until protective measures are approved by UDOT.

(b) Uncased crossings of welded steel pipelines carrying flammable, corrosive, expansive, energized, or unstable materials may be permitted if additional protective measures are taken in lieu of encasement. Such measures shall use a higher factor of safety in the design, construction, and testing of the uncased carrier pipe, including thicker wall pipe, radiograph testing of welds, hydrostatic testing, coating and wrapping, and cathodic protection.

**R930-7-9. Utilities on Highway Structures.**

(1) General.

(a) The installation of utility facilities on highway structures can adversely impact the integrity and capacity of the structure, the safe operation of traffic, maintenance efficiency, and the aesthetic appeal of the structure. Utility facilities shall not be installed on highway structures except in extreme cases. When installation of utilities at an alternate location exceeds the cost of attaching to the structure by four times, UDOT will consider such an installation. The utility company shall submit documentation requesting installation on highway structures to the UDOT Structures Division for review and approval. Attachment of a utility facility will only be considered if the structure is adequate to support the additional load. This adequacy must be verified by a load rating completed by the utility company following UDOT's Load Rating Policies and Procedures, submitted to UDOT along with the necessary documentation including calculations and a load rating model.

Installing utility facilities within 50 feet of structures may impact the design, installation, operation, maintenance and safety of the structures, and the utility facilities. Utility companies shall address potential impacts when projects are proposed to ensure compatibility between utility facilities and

UDOT structures and to assure all relevant utility industry codes and UDOT structural requirements are adequately addressed.

(2) Installation on Highway Structures.

(a) If UDOT allows a structure installation, it shall be at a location and of a design subject to review and approval by UDOT's Structures Department. Utility installations on structures shall not be considered unless the structure is of a design that is adequate to support the additional load and can accommodate the utility without compromising highway features. In addition, the utility installation shall be subject to the following requirements.

(i) Due to variations in highway structure designs, site-specific conditions, and other considerations, there is no standardized method by which utilities are installed on structures. Therefore, each proposed installation shall be considered on its individual merits and shall be individually designed for the specific structure.

(ii) Where installations of pipelines carrying hazardous materials are allowed, the pipeline shall be cased. The casing shall be open or vented at each end so as to prevent possible build-up of pressure and to detect leakage. Where located near streams, casings shall be designed and installed so that leakage does not compromise the stream. If a deviation is allowed for no casing, additional protective measures shall be used including higher standards for design, safety, construction and testing of the pipeline than would normally be required for cased construction.

(iii) All pipeline installations carrying gas or liquid under pressure which by their nature may cause damage or injury if leaked, shall be installed with emergency shutoff valves. Such valves shall be placed within an effective distance on each side of the structure, as approved by UDOT, and shall be automatic if required by UDOT.

(iv) Utility installations on highway structures shall not reduce vertical clearances above rivers, streams, roadway surfaces or rails. Installations should be designed to occupy a position beneath the deck in an interior bay of a girder or beam, or within a cell of a box girder bridge. Installations shall always be above the bottom of girders on a girder bridge or above the bottom of the bottom cord of a truss bridge. Utility installations outside of a bridge structure are unsightly and susceptible to damage and will only be approved by UDOT if there is no reasonable alternative.

(v) All utility facilities installed on highway structures shall be constructed of durable materials, designed with a long life expectancy, and must be installed in a manner that will minimize routine servicing and maintenance.

(vi) Utility facility mountings shall be of sufficient strength to carry the weight of the utility and shall be of a design and type that will not rattle or loosen due to vibrations caused by vehicular traffic. Acceptable utility installation methods are hangers or roller assemblies suspended either from inserts from the underside of the bridge floor or from hanger rods clamped to the flange of a superstructure member. Bolting through the bridge floor is not permitted. Where there are transverse floor beams sufficiently removed from the underside of the deck, the utility placement shall allow adequate clearance to enable full inspection of both the deck and the utility line. UDOT may consider a proposal to support the utility line on top of the floor beams.

(vii) Communication and electric power line installations shall be suitably insulated, grounded, and preferably carried in protective conduit or pipe from the point of exit from the ground to re-entry. Cable shall be carried to a manhole located beyond the back-wall of the structure. Access manholes are not allowed in a bridge deck.

(viii) Utility installations shall provide for lineal expansion and contraction due to temperature variations in conjunction with bridge movement.

(ix) All utility facility clearances from structure members must conform to all governing codes and shall not render any portion of the structure inaccessible for maintenance purposes.

(x) The utility company shall be responsible for restoration or repair of any portion of a structure or highway damaged by utility facility installation or use.

(xi) The expansion of an existing utility facility carried by an existing structure may be permitted if the expansion does not adversely impact the performance and load carrying capacity of the structure and otherwise complies with this rule.

(3) Utility Company Responsibilities.

(a) It is the responsibility of the utility company to obtain approval for a highway structure installation. The utility company shall ascertain the extent of UDOT's requirements prior to initiating the design for installation. A Utah registered Professional or Structural Engineer shall be responsible for the design if the installation is allowed. The utility company must prepare and submit complete design documents showing all details of the proposed work. These documents shall include plans, calculations, updated load rating with a Virtis load rating model, the permit application, and any other necessary information. The utility company shall be responsible for protecting, maintaining or relocating its utility installation, including the arrangement of service interruptions, to accommodate future UDOT structure work.

(b) All materials incorporated in the design must be certifiable for quality and strength and full specifications must be provided in support of the design.

(c) Adequate written justification must support the need for installing the utility facility on the structure and demonstrate that there is no viable cost-effective alternative.

(d) All components of the utility attachment shall be protected from corrosion. Steel components shall be stainless, galvanized or painted in accordance with the current UDOT Standard Specifications for Highway and Bridge Construction.

**R930-7-10. Utilities within Interstate, Freeway and Access Controlled Right-of-Way.**

(1) General Provisions. There are two basic types of access control.

No Access - does not allow access to the through-traffic lanes except at interchanges. Crossings at grade and direct driveway connections are prohibited. Access is controlled by fencing. This is typical of interstates and freeways.

Limited Access - provides access to selected roads. There may be some crossings at grade and some private driveway connections. This is typical of expressways and certain other highways.

(2) Factors UDOT may consider for allowing accommodation include distance between distribution points, terrain, cost, and prior existence.

(3) Longitudinal telecommunication installations may be allowed under Rule R907-64.

(4) Pursuant to FHWA regulations, UDOT may allow longitudinal accommodation of utility facilities but with greater restrictions within no access and limited access highway right of way as follows:

(a) No access: longitudinal installations on highways with no access are not permitted except in cases where no other feasible location exists and under strictly controlled circumstances. FHWA approval is required for installations on interstate facilities; and

(b) Limited Access: longitudinal installations on highways with limited access are generally not permitted. When such installations are allowed, individual service connections are not permitted unless no other reasonable alternatives exist.

(5) Utility facilities are allowed to cross no access and limited access highway right-of-way but with additional requirements as noted below in Section R930-7-10(7).

## (6) Longitudinal Utility Facilities.

(a) In addition to the requirements in Section R930-7-8(1)(a), the following requirements apply.

(i) Service connections are not permitted within no access highway right of way. Service connections are not permitted within limited access highway right of way unless no reasonable alternative exists as demonstrated by the utility company and as reviewed and approved by UDOT.

(ii) Service, maintenance, and operation of utilities installed along and within no access highway right of way may not be conducted from the through-traffic roadways or ramps. All maintenance activities must be accessed from a point approved by UDOT and FHWA.

(iii) An existing utility facility within the right of way acquired for an interstate, freeway, or access controlled highway project may remain if it can be serviced, maintained, and operated without access from the through-traffic roadways or ramps, and it does not adversely affect the safety, design, construction, operation, maintenance, or stability of the interstate, freeway, or access controlled highway. Otherwise, it shall be relocated.

(iv) Where approval for installation is permitted, utility installations and related components shall be buried parallel to the interstate, freeway, or access controlled highway and shall be located within five feet of the outer most right of way limits. Utility appurtenances shall be located as close as possible to the right of way line.

(v) An existing utility carried on an interstate, freeway, or access controlled highway structure crossing a major valley or river may be permitted by UDOT to continue to be carried at the time the route is improved if the utility facility is serviced without interference to the traveling public.

## (7) Utility Crossings.

(a) In addition to the requirements in Section R930-7-8(1)(d), the following requirements apply.

(i) A utility following a crossroad or street which is carried over or under an interstate, freeway, or access controlled highway must cross the interstate, freeway, or access controlled highway at the location of the crossroad or street in such a manner that the utility can be serviced without access from the through-traffic roadways or ramps.

(ii) Overhead utility lines crossing an interstate, freeway, or access controlled highway shall be adjusted so that supporting structures are located outside access control lines. In no case shall the supporting poles be placed within the clear zone. Where required for support, intermediate supporting poles may be placed in medians of sufficient width that provide the clear zone from the edges of both travelled ways. If additional lanes are planned, the clear zone shall be determined from the ultimate edges of the travelled way. When right of way lines and access control lines are not the same, such as when frontage roads are provided, supporting poles may be located in the area between them.

(iii) At interchange areas, supports for overhead utility facilities will be permitted only if located beyond the clear zone of traffic lanes or ramps, sight distance is not impaired, and can be safely accessed.

(iv) Manholes and other points of access to underground utilities may be permitted within the right of way of an interstate, freeway, or access controlled highway if they can be serviced or maintained without access from the through-traffic roadways or ramps. When right of way lines and access control lines are not the same, such as when frontage roads are provided, manholes and other points of access may be located in the area between them.

(v) Where a casing is not otherwise required, it shall be considered as expedient in the insertion, removal, replacement, or maintenance of carrier pipes crossing interstate, freeways, or access controlled highways. Casings shall extend to the access

control lines. See Section R930-7-8(4).

## (8) Longitudinal Telecommunications Installation.

(a) Installation must comply with R907-64.

## (9) Wireless Telecommunications Facilities.

(a) Facilities must comply with R907-64.

**R930-7-11. Utility Construction and Inspection.**

## (1) General Provisions.

(a) The method used for utility work is generally determined by local conditions. The location, terrain, obstructions, soil conditions, topography, and UDOT standards to maintain the integrity and safety of the right of way and roadway are important considerations for the proper placing of utilities. Familiarity and compliance with this rule will facilitate the construction process for utility companies.

(b) UDOT may perform routine inspection of utility construction work to monitor compliance with the license agreement, encroachment permit and with state and federal regulations. A permit may be revoked for cause if a utility company or contractor is not complying with the terms and limitations of the permit which will require a new permit at the contractor's expense to proceed with the work.

(c) Costs associated with the inspection are the responsibility of the utility company. Failure to pay inspection invoices issued by UDOT may result in revocation of the permit and may require the posting of an inspection bond on future permit applications.

## (2) Utility Construction and Maintenance.

(a) No utility construction work by a utility company or a utility company's contractor may begin until a written encroachment permit has been issued to the utility company by UDOT.

(b) Traffic control for utility construction and maintenance operations shall conform to UDOT's current accepted Utah MUTCD or UDOT Traffic Control Plans, whichever is more restrictive. All utility construction and maintenance operations shall be planned to keep interference with traffic to an absolute minimum. On heavily traveled highways, utility operations interfering with traffic shall not be conducted during periods of peak traffic flow. This work shall be planned so that closures of intersecting streets, road approaches, or other access points are held to a minimum.

(c) The utility company shall not begin any work on UDOT right of way until the permit is issued and notice to proceed is given to the utility company by UDOT. After notice to proceed is received, the utility company shall complete construction in accordance with UDOT requirements.

(d) When highway utility construction or maintenance activities involve existing underground utility facilities, utility company or contractor shall comply with Title 54, Chapter 8a, Damage to Underground Utility Facilities.

(e) Utility work shall be completed within the number of days specified in the approved permit. When the work is not completed within the specified time UDOT has the option of extending the time or revoking the permit and acting on the appropriate bond to pay for completion of the work. All time extensions granted by UDOT shall be in writing.

(f) Disturbance of areas within highway right-of-way during utility construction shall be kept to a minimum and all right of way shall be restored to the satisfaction of UDOT. All utility construction methods used within the highway right of way shall be performed in accordance with current Standard Specifications for Highway and Bridge Construction, UDOT Permit Excavation Handbook, the provisions of this rule, and encroachment permit requirements. Unsatisfactory construction work, as determined by UDOT's inspector, shall promptly be corrected to comply with appropriate standards and specifications. UDOT may issue written notification that identifies the deficiencies and the period of time to cure or

correct the deficiencies. If the restoration is not performed within the specified time, UDOT may perform or have performed the corrective work and the utility company shall be responsible for all costs incurred.

(g) The utility company shall avoid disturbing or damaging existing highway drainage facilities and is responsible for repairs, including restoration of ditch flow lines. Wherever necessary, the utility company shall provide drainage away from its own facilities to avoid damage to the highway.

(h) The utility company is prohibited from spraying, cutting or trimming trees or other landscape elements unless specific written permission is obtained from UDOT. The approval of an encroachment permit does not include approval of such work unless the cutting, spraying, and trimming is clearly indicated on the permit application. In general, when permission is given, only light trimming will be permitted. When tree removal is approved, the stump shall be removed and the hole properly backfilled to natural ground density or restored as otherwise approved by UDOT. The work site shall be left clean and trash free. All debris shall be removed. Reseeding shall be performed in accordance with UDOT's approved schedule.

(i) UDOT may require that any abandoned utility pipe or conduit be removed, capped, or filled with an appropriate material acceptable to UDOT.

(j) All utility facilities located on rights of way shall be adequately maintained. Any physical modifications, relocations, additions, excavations, or impedances of traffic within the right of way shall require the submittal of a new encroachment permit application. No work may begin until the new encroachment permit is approved.

(k) Restoration of the highway right of way disturbed by excavation, grading work, or other activities shall include reseeding and restoration of existing landscaping. All areas which are denuded of vegetation as a result of construction or maintenance shall be reseeded which is subject to inspection and acceptance by UDOT.

### (3) Open Trench Construction Traversing Highways.

(a) Open trench utility installations are not permitted unless an acceptable trenchless method is unfeasible such as in unsuitable soil conditions or extremely difficult rock. UDOT may also grant a deviation from requiring trenchless construction where older pavement is severely deteriorated.

(b) Open trench construction on highways is limited to areas where traffic impacts are minimal. Any pavement structure broken, disturbed, cut or otherwise damaged in any way shall be removed and replaced to a design equal to or greater than the surrounding undisturbed pavement structure, or as otherwise determined by UDOT.

(c) For open trench installations, the utility company is responsible for the restoration and maintenance of the pavement structure for three years as outlined in Section R930-7-6(6)(b), unless a deviation is granted by UDOT. When the utility company or its contractor performing the work is not equipped to or fails to properly repair the damage to the pavement structure, UDOT will repair the damage and bill the utility company for the actual costs incurred, including any administrative costs. All pavement restoration work performed by the utility company shall be completed within 48 hours after completion of the excavation and backfill.

(d) All open trench utility installations shall conform to the applicable provisions of the current UDOT Standard Specifications for Road and Bridge Construction.

(e) It is the utility company's responsibility to restore the structural integrity of the road bed, secure the utility facility against deformation and leakage, assure that the utility trench does not become a drainage channel, and that the backfilled trench doesn't impede or alter road drainage.

(f) Trenches shall be cut to have vertical faces. Maximum

width shall be two feet or the outside diameter of the pipe plus one and one-half feet on each side. All trenches shall be shored where necessary and shall meet OSHA requirements.

(g) Bedding shall be provided to a depth of one-half the diameter of the pipe and shall consist of granular material, free from rocks, lumps, clods, cobbles, or frozen materials, and shall be graded to a firm surface without abrupt change in bearing value. Unstable soils and rock ledges shall be sub-excavated from beneath the bedding zone and replaced with suitable granular material.

(h) Backfill shall meet the current UDOT Standard Specification 02056 Embankment, Borrow and Backfill and 03575 Flowable Fill. Additional specifications may be required by UDOT.

(i) Pavement replacement may be performed by either the utility company or a contractor engaged by the utility company. The Region Permits Officer will determine pavement replacement requirements. The utility company is liable for three years from the date of completion of the pavement replacement for the cost of repairs if the backfill subsides or the patched pavement fails.

(j) Where a utility company fails to properly repair any damage to the pavement structure, UDOT may repair the damage and the costs, including administrative costs, will be the responsibility of the utility company.

### (4) Trenchless Utility Construction.

(a) Trenchless utility installations are required for all utility crossings of highways or roadways, where practicable. This construction method is required to avoid disturbing the pavement surface, particularly where underground utilities exist on major highways, expressways, or freeways. Only UDOT approved methods may be used to install a utility under a highway.

(b) All trenchless pipeline installations shall extend under and across the entire roadway prism to a point five feet beyond the toes of the fore-slopes, borrow ditch bottom, or across the access controlled right of way lines, but never less than 15 feet from the edge of pavement or a ramp.

(c) Water jetting or tunneling may not be used. Water-assisted or wet boring may be permitted if the utility company can demonstrate to UDOT that the operation will not adversely impact the roadway and sub-grade.

(d) The size of a trenchless operation shall be restricted to the minimum size necessary for the utility installation and shall not exceed the utility facility diameter by more than 5% unless otherwise required based on equipment and product manufacturer's specifications. Grout or flowable fill backfill shall be used for carriers or casings and for over-breaks, unused holes or abandoned carriers or casings. The composition of the grout shall be cement mortar, a slurry of fine sand or other fine granular materials.

(e) Portals including surface openings and bore pits shall be established safely beyond the highway surface and the clear zone so as to avoid impairing the roadway during installation of the pipeline.

(f) Where a bulkhead seals the pipeline portal, the portal shall be suitably offset from the surfaced area of the highway. Shoring and bulkheading shall conform to applicable federal, state, and local jurisdiction construction and safety standards. Where a bulkhead is not installed in the pipeline, the portal shall be offset no less than the vertical difference in elevation between the surfaced area of the highway and the bottom of the bore pit.

(g) The utility company shall follow manufacturer's guidelines and industry standards for equipment set-up and operation. The utility company shall assess soil conditions to determine the most appropriate installation technique. Subsurface bore paths shall be tracked and recorded by the utility company, and all failed bores shall be appropriately

abandoned and backfilled by the utility company.

(h) Drilling fluids shall be prepared and used according to fluid and drilling equipment manufacturer's guidelines. The utility company shall use fluid containment pits at both bore entry and exits points, and shall use appropriate operational controls so as to avoid heaving or loss of drilling fluids from the bore. Antifreeze additives shall be non-toxic and biodegradable products.

(i) The utility company shall dispose of drilling fluids and other materials in permitted facilities that accept the types of chemicals and wastes used in the trenchless operations.

(5) Utility Markers.

(a) The location of utility facilities within highway right of way presents certain risks to construction and maintenance activities, construction personnel, and to the facility itself when work in and around the area of the utility facility is in progress. To minimize risk and maximize safety, it is the utility company's responsibility to provide identification markers and tracer wire or detectable warning tape for all buried facilities located within the right of way.

(b) A trace wire, metallic tape, or other accepted industry material approved by UDOT for locating utilities with geophysical equipment shall be properly installed with all non-metallic underground lines.

(c) The utility company shall place permanent markers identifying the location of underground utility facilities, whether they are crossing the highway or installed longitudinally along the highway. Markers shall not interfere with highway safety and maintenance operations. Preferably, markers are to be located at the right of way line if that location will provide adequate warning. The telephone number for one-call notification services to request marking the line location prior to excavation, and for emergency response, shall appear on the marker.

(d) The utility company shall maintain its markers in good condition. Color faded markers shall be replaced as necessary so that their visibility to maintenance crews and others is not impaired.

(6) GPS Requirements.

(a) It is the responsibility of the utility company to produce and maintain a set of certified reproducible plans and an electronic file showing the location of all its facilities in the right of way including overhead facilities and crossing points. The utility company is responsible to maintain an accurate file to be used by UDOT for future planning to avoid utility conflicts. These plans shall also include appropriate vertical and horizontal ties to the highway survey control.

(b) For new facility installations, the utility company shall use a survey grade Global Positioning System (GPS) to survey their facility locations and submit an electronic file to UDOT. Specific requirements for survey data will be determined by UDOT. The location survey points shall include major junction points, manholes, valves, changes in line or grade, and any other significant feature that will facilitate installation approval and future planning activities.

(c) If the utility company fails to provide UDOT with a set of plans and files showing the surveyed utility locations upon request then the utility company is required to secure the actual locations of their facilities at no cost to UDOT. If the utility company fails to provide the utility location information requested within ten days, UDOT may hire a Subsurface Utility Engineering (SUE) consultant to locate the utilities at the utility company's expense.

**R930-7-12. Maintenance Responsibility.**

The utility company is responsible for maintenance and liability of its utility facilities and appurtenances on UDOT right of way or on UDOT property including facilities installed without a

Statewide Utility License Agreement or permit, whether operational, out of service, or abandoned.

**R930-7-13. Deviations.**

(1) Deviations from provisions of this rule may be allowed if they do not violate state and federal statutes, law, or regulations and UDOT has determined the use of the right of way will be for the public good without compromising the transportation purposes of the right of way.

(2) Requests for deviations with limited impact may be considered by UDOT on an individual basis, upon justification submitted by the utility company.

(3) Requests for significant deviations must demonstrate extreme hardship and unusual conditions and provide justification for the deviation. Requests must demonstrate that alternative measures can be specified and implemented and still fulfill the intent of state and federal regulations. Requests for these deviations must include the following:

(a) formal request by the utility company; and

(b) an evaluation of the direct and indirect design, safety, environmental, and economic impacts associated with granting a deviation.

(4) In order for UDOT to grant a significant deviation the following approvals are necessary:

(a) formal recommendation for approval by the UDOT Region Permits Officer or the officer's supervisor;

(b) formal recommendation for approval from the UDOT Region Director;

(c) concurrence of the UDOT Statewide Utilities Engineer; and

(d) FHWA concurrence if the deviation applies to a utility facility located within a Federal-aid highway right of way.

(5) For UDOT projects that are solely state funded, UDOT may deviate from the utility relocation regulations contained in the Code of Federal Regulations by reimbursing a utility company for replacement of existing buildings with functionally equivalent buildings, if the following requirements are met:

(a) the utility company owns the property in fee that UDOT needs to acquire for its project;

(b) the utility company owns operational facilities located upon, below or above the property;

(c) the utility company owns a building on the property that provides maintenance services for the utility facility;

(d) a property purchase in accordance with 49 CFR 24 will not adequately compensate the utility company's costs to relocate and functionally re-establish the maintenance facility; and

(e) the deviation promotes the public interest.

**R930-7-14. Enforcement.**

(1) This rule is subject to enforcement pursuant to and as provided for in Utah Code, and may include, but not be limited to the following:

(a) administrative citations, in letter form, citing non-compliance items and proper redress requirements, including notice that UDOT may take whatever action is necessary to rectify the situation and subsequently submit a claim against the appropriate bond to recover from the utility company actual costs incurred by UDOT;

(b) increased bonding levels to recoup potential restoration costs on current or future utility projects;

(c) denial of future permits until past non-compliance is resolved; and

(d) legal action to secure reimbursement from the utility company for costs incurred by UDOT due to damages to the right of way or noncompliance with the permit.

**KEY: right-of-way, utilities, utility accommodation**

**February 23, 2016**

**72-6-116(2)**





**R986. Workforce Services, Employment Development.****R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

**R986-200-202. Family Employment Program (FEP).**

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
  - (i) a licensed medical doctor;
  - (ii) a doctor of osteopathy;
  - (iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or  
 (v) a licensed Physician's Assistant.  
 (d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

**R986-200-203. Citizenship and Alienage Requirements.**

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

- (a) who is paroled into the United States under section

212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

**R986-200-204. Eligibility Requirements.**

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony, or who are violating parole or probation for a felony or a misdemeanor, are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same

month. This is true even if household composition has changed. If a child in the household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

**R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.**

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are

counted:

(a) all absent household members who are not required to participate in an employment plan under R986-200-210 and who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included. If the household member is required to participate in an employment plan, the household member must be included.

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(f) if the only adult in the household is temporarily absent, the dependent child or children must be left under the care of an adult or benefits will be denied;

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

**R986-200-206. Participation Requirements.**

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and  
 (c) assisting ORS in good faith to:  
 (i) establish the paternity of all minor children; and  
 (ii) establish and enforce child support obligations.  
 (d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

#### **R986-200-207. Participation in Child Support Enforcement.**

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States;

or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also

cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits;

(c) the client is participating in FEPTP; or

(d) the client is an undocumented alien parent.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, undocumented alien parent, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

#### **R986-200-208. Good Cause for Not Cooperating With ORS.**

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be

significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department

upon a finding of new, or newly discovered evidence, or a change in circumstances.

#### **R986-200-209. Participation in Obtaining an Assessment.**

(1) Within 30 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

#### **R986-200-210. Requirements of an Employment Plan.**

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

#### **R986-200-211. Education and Training As Part of an Employment Plan.**

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(2) Graduate work can never be approved or supported as part of an employment plan.

#### **R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.**

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided

in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving food stamps and the client is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

**R986-200-213. Financial Assistance for a Minor Parent.**

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

**R986-200-214. Assistance for Specified Relatives.**

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and sisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated;

(m) former stepparents

(n) a Native American adult who has a Native American child placed in, or living in that adult's home, and both the child and the adult are members of, or eligible for membership in, a federally recognized tribe; and

(o) an adult of the same ethnicity, culture, country of origin, religion, language and/or nationality as the refugee/asylee child in his or her care.

(2) The specified relative must provide proof of relationship to the child. If the specified relative is unable to provide proof, but DCFS has determined that one of the relationships in subparagraph (1) of this section exists, the Department will accept the DCFS determination. DCFS will not be liable for any potential overpayment resulting from a determination made regarding relationship.

(3) The Department shall require compliance with Section 30-1-4.5

(4) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, FEP rules apply.

(5) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated, or have a blood relationship to a dependent child who is in the home and who is included in the household for assistance purposes. This does not apply to specified relatives who are eligible under subsection (1)(n) and (o) of this section;

(6) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(7) The child must be currently living with, and not just visiting, the specified relative;

(8) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(9) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(10) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(11) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(12) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(13) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(14) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

**R986-200-215. Family Employment Program Two Parent Household (FEPTP).**

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

**R986-200-216. Diversion.**

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

- (a) the applicant's employment history;
- (b) the likelihood that the applicant will obtain immediate full-time employment;
- (c) the applicant's housing stability; and
- (d) the applicant's child care needs, if applicable.

- (3) To be eligible for diversion the applicant must;
  - (a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;
  - (b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and
  - (c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the

client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating diversion.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

(10) A household can only receive one diversion assistance payment in a 12 month period.

**R986-200-217. Time Limits.**

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

- (a) each month when a parent client received financial assistance beginning with the month of January, 1997;

- (b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

- (c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

- (a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

- (b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

- (c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

- (d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

- (e) diversion assistance does not count toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

- (f) months when a parent client received transitional assistance.



**R986-200-218. Exceptions to the Time Limit.**

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an exception under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An exception under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the

home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted;

(i) the client is currently participating in the Intergenerational Welfare Dependency Poverty Pilot Program, "Next Generation Kids" and needs additional time to obtain job training and preparation to decrease the risk of his/her children being part of intergenerational welfare dependency. This exception will not be available if the Pilot Program is to end; or

(j) parents who volunteer to fully participate in a Department-approved employment and training activity. Department approval will only be granted if all the requirements of Department rule 986-200-211(1)(a) through (f) are met.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment;

or

(f) neglect or deprivation of medical care.

(3) Employment extension. An extension to the time limit can be granted for a maximum of an additional 24 months if during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage.

(a) If, at the end of the 24-month extension, the parent client qualifies for an exception under subsections (1) or (2) of this section, an exception can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more than a total of 60 months unless an exception can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension or an exception must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions or extension listed above. Both parents need not meet the same exception or extension.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons for an exception in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application

process to determine eligibility for assistance from those other programs.

(8) Exceptions and extensions are subject to a review at least once every six months.

**R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.**

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

**R986-200-220. Mentors.**

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

- (a) develop life skills;
- (b) implement an employment plan; or
- (c) obtain services and support from:
  - (i) the volunteer mentor;
  - (ii) the Department; or
  - (iii) civic organizations.

**R986-200-221. Drug Testing Requirements.**

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately determine the reasonable likelihood of

the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be performed in accordance with the requirements of Utah Code Ann. Section 34-38-6. Before taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequent occurrence within a 12 month period if a client identified in subsection (1):

(a) refuses to take a drug test as required in subsection (2) or (3) of this section,

(b) fails to enter and successfully complete treatment as required in subsection (3) of this section, or

(c) tests positive for the unlawful use of a controlled substance, on any subsequent drug test required by the Department, while in treatment or at the completion of treatment.

(5) A client can be excused from complying with the requirements of this section if the necessary resources are not available through no fault of the client.

(6) A client can be excused from complying with the requirements of this section in a timely manner if the client can show reasonable cause. Reasonable cause under this section means the client was prevented from complying in a timely manner through no fault of his or her own or failed to comply in a timely manner for reasons that are reasonable and compelling.

(7) If a client disagrees with the results of a drug test performed under subsections (2) or (3) of this section, the client can provide the Department with the results of a second drug test. This second drug test will be performed:

- (i) at the client's expense,
- (ii) at a testing facility approved by the Department,
- (iii) in accordance with requirements of Utah Code Ann.

Section 34-38-6, and

(iv) within seven days of the Department sending notice of the results of the original drug test.

(c) If the results of the second drug test are negative, the Department will reimburse the client the actual and reasonable verified costs incurred in obtaining the second test.

**R986-200-230. Assets Counted in Determining Eligibility.**

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling

price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed \$2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

#### **R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.**

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an

asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

#### **R986-200-232. Considerations in Evaluating Real Property.**

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

#### **R986-200-233. Considerations in Evaluating Household Assets.**

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

#### **R986-200-234. Income Counted in Determining Eligibility.**

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include

insurance premiums, savings, and garnishments to pay an owed obligation.

**R986-200-235. Unearned Income.**

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for food stamps, the \$25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse

a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

**R986-200-236. Earned Income.**

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps\*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

- (i) training incentive payments and work allowances; and
- (j) earned income of dependent children.
- (3) Income that is not counted as earned income:
  - (a) income for an SSI recipient;
  - (b) reimbursements from an employer for any bona fide work expense;
  - (c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or
  - (d) Earned Income Tax Credit (EITC) payments.

#### **R986-200-237. Lump Sum Payments.**

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

#### **R986-200-238. How to Calculate Income.**

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the

estimated income can be adjusted prospectively but not retrospectively.

#### **R986-200-239. How to Determine the Amount of the Financial Assistance Payment.**

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of \$100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

TABLE

Household Size	Payment Amount
1	\$288
2	\$399
3	\$498
4	\$583
5	\$663
6	\$731
7	\$765
8	\$801

Amounts for household sizes larger than 8 are available at all Department offices.

**R986-200-240. Additional Payments Available Under Certain Circumstances.**

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive \$60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

- (a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;
- (b) full-time attendance in an education or employment training program; or
- (c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of \$15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of \$300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

**R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.**

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

- (i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household

even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

**R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.**

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

- (a) one hundred dollars from income earned by each parent or stepparent living in the home, and
- (b) an amount equal to 100% of the SNB for a group with the following members:
  - (i) the parents or stepparents living in the home;
  - (ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

**R986-200-243. Counting the Income of Sponsors of Eligible Aliens.**

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

- (a) paroled or admitted into the United States as a refugee or asylee;
- (b) granted political asylum;
- (c) admitted as a Cuban or Haitian entrant;
- (d) other conditional or paroled entrants;
- (e) not sponsored or who have sponsors that are organizations or institutions;
- (f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial

assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of \$175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

#### **R986-200-244. TANF Needy Family (TNF).**

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF

funded services.

(6) Assets are not counted when determining eligibility for TNF services.

#### **R986-200-245. TANF Non-FEP Training (TNT).**

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

#### **R986-200-246. Transitional Cash Assistance.**

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA,

(b) be employed and

(i) have income greater than the FEP or FEP TP income guideline

(ii) the FEP or FEP TP assistance was terminated because of that income, and

(iii) the earned income exceeds the unearned income at the time the FEP or FEP TP was terminated, and

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies income at the minimum required in subparagraph (2)(b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) To receive the second and third month of the TCA benefit, the client must remain employed or have had an open FEP case that closed during the prior month due to income described in (2)(b) of this section.

(6) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

**R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).**

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for Wasatch Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

- (a) be currently receiving FEP benefits and have received at least one FEP payment;
- (b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities,
- (c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;
- (d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and
- (e) have not previously participated in the FEP SE program.

(2) An employer eligible for a subsidy under this section is an employer that:

- (a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;
- (b) is a "qualified employer" which is defined as any employer other than the United States, any State, or any political subdivision or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;
- (c) pays a wage of at least \$8 per hour. Commission only jobs may qualify if the employer guarantees \$8 per hour or more;
- (d) has not displaced or partially displaced existing workers by participating in this program;
- (e) has at least one other employee;
- (f) will provide the client with at least 20 hours work per week; and
- (g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient has been hired, a qualified employer will be paid a \$500 subsidy and an additional \$1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(4) FEP SE will continue for as long as funding is available.

**R986-200-249. Access to Assistance.**

Financial assistance for FEP and FEPTP is provided through an electronic benefit transfer (EBT) card. The card, instructions on its use, and applicable fees will be provided to all clients. A method for obtaining assistance without a fee will be made available. In other circumstances, minimal fees or/ or surcharges will apply. Information about obtaining assistance without a fee or surcharge, when fees or surcharges apply, and the amount of the fee or surcharge is available on the Department's website: jobs.utah.gov.

**KEY: family employment program**

February 24, 2016

35A-3-301 et seq.

Notice of Continuation September 2, 2015

**R994. Workforce Services, Unemployment Insurance.**

**R994-205. Exempt Employment.**

**R994-205-101. Exempt Domestic Service.**

Domestic services are exempt under the Act, provided they are not included in covered employment under Subsection 35A-4-205(1)(d).

**R994-205-102. Exempt Family Service.**

Certain family service is exempt from coverage under the Act based upon the type of employing entity.

(1) Sole proprietorship exempt family service includes the following relationships:

- (a) A worker employed by his or her spouse.
- (b) A parent employed by his or her son or daughter. The exemption also applies to a stepparent employed by his or her stepchild.
- (c) A child under the age of 21 employed by his or her parent regardless of the child's marital status. The exempt relationship is met even if the child is an adopted child, stepchild, or foster child. The foster child must be living with the foster parent.

(2) Partnership family service is exempt from coverage if the worker has an exempt family relationship to all partners. Exempt family relationships are the same relationships as for sole proprietorships in subsection (1) of this section. However, it is not necessary for the same relationship to exist between the worker and each partner.

(a) Examples of partnership family relationships that are exempt include:

- (i) A child employed by a partnership composed of the child's parents.
- (ii) A woman employed by a partnership composed of her husband and her son.

(b) Examples of partnership family relationships that are not exempt include:

- (i) A woman employed by a partnership composed of her husband and his brother is not exempt because the required family relationship between the woman and her brother-in-law does not exist.
- (ii) A man employed by a partnership composed of his wife and his son-in-law is not exempt because the required family relationship between the man and his son-in-law does not exist.

(3) There are no exempt family relationships in corporations, limited liability companies, and any other entity types not discussed in this section.

**R994-205-103. Exempt Employees Hired Temporarily for a Disaster.**

The Act excludes the services of governmental entity or Indian tribe employees hired solely on a temporary basis for disaster-type emergencies.

(1) Temporary basis employment is not the same as intermittent or irregular employment. Intermittent or irregular employment involves an on-going relationship, such as workers with an "on-call" status.

(2) Disaster type emergencies are those that affect the community on a wide scale, such as a forest fire, storm, or flood. Incidents that affect a few individuals, such as a house fire or automobile accident are not disaster type emergencies.

**R994-205-104. Exempt Casual Labor.**

(1) Casual labor is exempt under the Act if:

- (a) The service is not in the course of the employing unit's trade or business;
- (b) The payment for such service is less than \$50 in a calendar quarter; and
- (c) The worker performs such service on some portion of a day for less than 24 days in a calendar quarter or less than 24



days during the preceding calendar quarter.

(2) Services "not in the course of the employing unit's trade or business" include services that do not promote or advance the trade or business, such as services performed in connection with the employer's hobby or repairs to the employer's private home.

(3) Casual labor does not apply to domestic service exempt under subsection 35A-4-205(1)(d).

(4) Casual labor does not apply to any services performed for a corporation or limited liability company.

(5) Services performed by a worker for a property owner in regard to building or remodeling the owner's home are exempt if the requirements in subsection (1)(a) of this section are satisfied.

#### **R994-205-105. Exempt Commission Insurance Sales.**

Employment does not include services performed as an insurance agent or solicitor if payment for such services is solely by way of commission.

(1) An insurance solicitor is an employee of an insurance agent and is empowered to sell insurance on behalf of the agent. The solicitor usually does not have binding authority, and the business generated by the solicitor is usually owned by the agent, and not the solicitor.

(2) Services performed by a worker selling insurance are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for insurance sales services is a salary, all of the services are covered employment and the total payment, salary and commission, is subject to contribution payments.

(b) If a worker is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If the worker is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances are considered to be payment solely by way of commission.

(d) If a worker performs both commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. If the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

#### **R994-205-106. Exempt Real Estate Sales.**

Employment does not include services as a licensed real estate agent if payment for such services is solely by way of commission.

(1) The "licensed" requirement refers to the license issued by the Utah Division of Real Estate to principal real estate brokers, associate real estate brokers, and real estate sales agents.

(2) The services performed as a real estate agent, as provided in Section 61-2f-201, must be performed pursuant to a written contract and include activities generally associated with the sale of real property.

(3) Services performed by a worker as a licensed real estate agent are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for real estate sales services is a salary, all of the services are covered employment and the total payment, salary and commission is subject to contribution payments.

(b) If a worker performing real estate sales services is

guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If a worker performing real estate sales services is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances against future commissions are considered to be payment solely by way of commission.

(4) If a worker performs both commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. If the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

#### **R994-205-107. Exempt Outside Sales.**

The Act excludes the services of salespersons if the services are performed outside the employer's place of business, the salesperson is paid solely by way of commission, the services are not employment at common law, and the services are not employment as a traveling or city salesperson defined in Subsection 35A-4-204(2)(i).

(1) The employer's place of business is defined as an establishment where business is conducted, services are rendered, retail sales are made, or goods are manufactured, stored, or processed. This definition also includes temporary places of business such as booths or exhibits at trade shows, fairs and festivals.

(2) A commission is defined as a payment calculated as a percentage of the sales volume or value. Outside sales services are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for outside sales services is a salary, all of the services are covered employment and the total payment, salary and commission, is subject to contribution payments.

(b) If a worker is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If the worker is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances are considered to be payment solely by way of commission.

(d) If a worker performs both outside commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. However, if the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

(3) Employment at common law is defined by the Internal Revenue Service's current common law rules.

(4) An outside salesperson may perform incidental activities at the employer's place of business, such as writing up and transmitting orders, replenishing sales supplies, or attending sales meetings, provided such activities are not routine, without losing the classification as an outside salesperson.

#### **R994-205-201. Included and Excluded Service.**

When a worker performs both included and excluded services for an employer during a pay period, all the services are considered to be included or excluded for that pay period,

depending on the time spent in each activity.

(1) Time Spent in a Pay Period.

(a) If 50% or more of a worker's time is spent performing services that constitute employment, all the services are considered to be covered employment.

(b) This 50% test is applied to each pay period. A worker could have all services included in covered employment during one period and excluded in another.

(2) Employer Must Verify Time Spent.

In order to have all services performed by a worker excluded from covered employment, the employer must show to the satisfaction of the Department that less than 50% of the time spent in any pay period is for services that constitute employment.

(3) Pay Period.

Subsection 35A-4-205(2) does not apply if there is no regular pay period, the pay period covers more than 31 consecutive days or there are separate pay periods for the included and excluded services.

**KEY: unemployment compensation, employment tests**  
**February 24, 2016** **35A-4-205**  
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